A Comparison of Recent 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 and Recommendations for Improvement

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Abstract

International arbitration as a dispute resolution mechanism in Asia is growing in popularity. Hong Kong and Singapore have long been acknowledged as regional arbitration centers but Korea is now facing an increased demand as an arbitration center as well. As Hong Kong and Singapore compete to increase demand as regional centers of arbitration and as Korea becomes an alternative to Hong Kong and Singapore, all three jurisdictions 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 Hong Kong and Singapore, 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 viewed as a relatively new arbitration service provider. It is against this backdrop that Korea's international arbitration rules will be viewed, with suggested changes to increase Korea's reputation, not only as a regional center of arbitration, but also as an international center of arbitration.

Key words: International arbitration, Arbitration, Dispute resolution, Arbitral regimes, ICC, SAIC, HKIC, KCAB, UNCITRAL Model Law

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I. Introduction

In the past decade, arbitration in Asia has increased dramatically. This can be seen as a natural outcome of the increase in trade. The rapid economic growth in Asia has fueled the use of commercial arbitrations. It has been pointed out that rapid growth of the Asian region, regardless of the economic crisis of the 1990s, has led to an increase in international arbitration as well.[1]

The increase in the number of ICC arbitrations in Asia from 1980 to 2011 is reflective of the economic growth of the region. In 1980, 4.7 % of the parties to the International Chamber of Commerce (ICC) arbitrations came from the Asia-Pacific region. By 2000 however, some 11.6% of the parties to the ICC arbitrations came from Asia-Pacific which increased to 12.5% on 2011. Moreover, the number of ICC arbitration seats increased in Asia-Pacific as well. In 1980, the number of ICC arbitrations seated in the Asia-Pacific countries was zero. By 2010, 12.7% of all ICC arbitrations were seated in the Asia-Pacific countries. The increase in the Asia-Pacific related ICC arbitrations also occurred in the context of the increasing ICC arbitration cases. In 1983, the ICC received approximately 300 arbitration requests worldwide while in 2005, it received approximately 521 requests, and in 2011, it received approximately 796 requests for arbitration.[2] It is evident therefore that along with the economic expansion in Asian countries in the 1980s, 1990s, etc. came an increased use of domestic and international arbitrations.

As a dispute resolution mechanism in Asia, arbitration is expected to increase even further as the outcome of the increase in cross border transactions and the expansion of trade and business.[3] In this content, a number of arbitration centers in Asia have emerged as popular seats of arbitration, namely, Singapore and Hong Kong.[4] It appears to be 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 pointed out that arbitration seems

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1. Veronica L. Taylor & Michael Pryles, *The Cultures of Dispute Resolution in Asia* 19 (Michael C. Pryles ed., 3d ed. Kluwer Law Int. 2006).
2. *Id.*at 19. *See also* Ow Kim Kit, *The Future of International Arbitration in Korea, Introduction to the ICC and Statistical Overview of ICC Arbitration in Asia*, ICC-KCC International Arbitration Symposium (2012).
3. Benjamin Hughes, *Dispute Resolution Special Report, Improving Standards*, 8(10) AsianCounsel (2010).
4. *See* Ow Kim Kit, *supra* note 2.

to be the default choice in most international transactions in Asia, and even though there are empirical studies on the choice of arbitral rules, the 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."[5]

Korea, on the other hand, though increasing in popularity, has not yet rivaled with Singapore or Hong Kong as an international arbitration center although its economy has continued to grow.[6] Although the number of arbitration cases in Korea has increased over the last few years, Korea is still not viewed as a top seat of international arbitration, despite enacting a forward looking institutional framework with accompanying arbitral rules.

This paper will concentrate on the similarities and differences between the three major arbitration centers with recommendations for increasing the international arbitration in Korea.

II. Analysis of Arbitral Laws and Rules of Singapore, Hong Kong and South Korea

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

Singapore's laws governing commercial arbitration are divided into international and domestic regimes.[7] The international regime, governed by Singapore's International Arbitration Act ("IAA"), which was enacted in 1999, basically follows the UNCITRAL Model Law on Commercial Arbitration.[8]

Singapore, desiring to become a world class international arbitration center, adopted the UNCITRAL Model Law on International Commercial Arbitration

5. Taylor, *supra* note 1, at 16.
6. Korea's Economy to Grow 1.9%, 27 Korea Economic Report, No. 1 (Jan./Feb. 2012), at 30.
7. *See* Chan Leng Sun, Sing. Arb. Ctr., *Arbitration Laws of Singapore*, (Dec. 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.
8. *Id.*

("the Model Law").[9] Though the domestic regime was harmonized with the international regime pursuant to legislation changed in Singapore's Arbitration Act in 2002, the two regimes are still separate allowing for Singaporean courts to have more review over domestic arbitrations.[10]

The IAA is considered a statute that incorporates both the Model Law and the New York Convention.[11] 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.[12]

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 where 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.[13]

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 of the IAA. However, regardless of opting out, the Model Law still applies.[14]

Singapore's IAA, based in part on the Model Law, follows the Model Law

9. *Id.*
10. *Id.*
11. *Id.*
12. *See* Singapore International Arbitration Act [SIAA], Chapter 143A Sec. 19.
13. *See* SIAA, Chapter 143A Sec. 5 (2).
14. Sec. 15 of the SIAA 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.

for staying legal proceedings.[15] 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, such as, incapacity, the tribunal acted outside of its jurisdiction or the award was contrary to the public policy.[16] The IAA has also added additional grounds of fraud or the breach of natural justice.[17]

Though Singapore's IAA closely follows the Model Law, Singapore continues to amend it to promote Singapore as an international arbitration center in Asia. Amended in 2010 and more recently in 2012, the IAA now allows interim injunctions in aid of foreign arbitral proceedings.[18] The 2012 amendments primarily cover or update the writing requirements that are similar to or conform to Hong Kong's Arbitration Ordinance, as well as, allowing the review of negative jurisdictional rulings. It also clarifies the status of orders made by emergency arbitrations.[19] 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 gave premier status to the Singapore International Arbitration Centre ("SIAC") as the "paramount body overseeing arbitration in Singapore.[20] The Chairman of the SIAC is the default appointing authority, if par-

15. *See* Sun, *supra* note 7.

16. *Id.*

17. *See* SIAA, Chapter 143A Sec. 24. Note that Art. 34 of the UNCITRAL Model Law on International Commercial Arbitration does not include fraud or the 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, namely: (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.

18. Herbert Smith, *Dispute Resolution and Governing Law Clauses in China-related Commercial Contracts* 18 (4th ed. 2011).

19. Darius Chan, *Singapore's International Arbitration Act 2012 v Hong Kong's Arbitration Ordinance 2011*, http://kluwer.practicesource.com/blog/2012/singapores-international-arbitration-act-2012-vs-hong-kongs-arbitration-ordinance-2011/.

20. Attorney-General's Chambers, Review of Arbitration Laws, Law Reform and Revision Division, LRRD No.3, at 8 (2001).

ties are unable to agree on the appointment of arbitrators.[21]

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[22].

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.[23]

The SIAC is seen by many as one of Asia's most efficient and effective arbitral institutions.[24] To enhance its reputation, it has recently amended its rules as of July 1, 2010 (SIAC Rules) to reflect the current trends in international arbitration and to address the needs of the arbitral community.[25] The amended SIAC Rules promote a more efficient and less costly proceedings with such additional features such as, expedited procedures, emergently arbitrators, removals of the Memorandum of Issues, as well as, changes to the arbitrator appointment process.[26]

1. Expedited Procedures

To address cost concerns of the arbitral community and its clients, the SIAC added the use of expedited procedures in the same case.[27] Therefore, a

21. *Id.*
22. *See* B.C. Yoon *et al*., *An Introduction to the Arbitration Rules of Singapore International Arbitration Center, International Arbitration and Dispute Resolution: Korea Perspective* (Kim & Chang, 2012).
23. *Id*. at 134
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id. See also* Singapore International Arbitration Centre [SIAC] Rules, Rule 5 (4th ed. 2010).

party may apply for arbitral proceedings to be conducted in accordance with the expedited procedure set forth in Section 5 of the SIAC Rules (2010), if the disputed amount does not exceed $ 5million, the parties agree to use the expedited procedure, or in cases of exceptional urgency.[28]

The advantage of using the expedited procedure is the shortened time period as the arbitral proceeding is shortened and the award is made within six months from the date when the tribunal is constituted.[29] See Rule 5.2(d) of the SIAC Rules (4th edition, July 1, 2010). Rule 5.2 of the SIAC Rules addresses the processes involved with the expedited procedure. It 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:
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> 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
> 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.[30]

2. Emergency Arbitrators

The 2010 amended rules of the SIAC also provides for emergency arbitrators. The parties requesting emergency relief must make an application for

28. *Id*.
29. *Id* at 136.
30. *See* SIAC Rules, Rule 5(2), *supra* note 23.

emergency relief and can current with the note of arbitration, but 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.[31] If the SIAC accepts such petitions for emergency relief, the Chairman of the SIAC shall appoint an arbitrator within one business day and the arbitrator shall have two days to establish a schedule in consideration of the application.[32]

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, only having been utilized in several 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 since a tribunal is constituted, the emergency arbitrator does not have any further power, and the tribunal may reconsider, modify or vacate the interim award.[33] However, the 2012 amendments added much needed clarification with regards to the enforceability of the emergency arbitrators' awards by defining such awards as enforceable by the courts in Singapore. This may increase the popularity of such tools in the future.

3. Removal of Memorandum of Issue

Another significant charge in the 2010 SIAC Rules was the removal of the requirement for the Memorandum of Issue.[34] The Memorandum of Issue mirrored the terms of reference under the ICC arbitration rules.

Prior to the 2010amendment, 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 that the SIAC arbitral proceedings will be shortened and that "the removal of this requirement demonstrates SIAC's

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31. *See* SIAC Rules, Schedule 1 (4th ed. 2010).

32. *See* SIAC Rules, Schedule 1 (5) (4th ed. 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.

33. *See* Yoon, *et al.*, supra note 22, at 136.

34. *Id*. at 138.

commitment to cost effective, speedy arbitration proceeding."[35]

4. Fee Structure

SIAC's rule regarding the arbitrator's fee also reflects the modern trend of capping the fee in accordance with the disputed amount.[36] 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 made.[37]

5. Singapore's Popularity

Singapore's popularity as a regional arbitration center is growing. Becoming well known in Asia, it has aggressively moved to increase its position as one of the leading international arbitration centers in Asia. Such steps and improvements to the 2007 SIAC Rules have met with success. Not only has the improvements to the SIAC Rules met with success, but some scholars pointed out that the "internationalization" of the SIAC has set the stage for its expansion and success.[38] Internationalization was obviously a major goal of Singapore and the SIAC.[39]

The number of cases handled by SIAC has increased 62 percent from 2000 to 2008 with a total number of filing up of 168 cases.[40] Eighty six percent of the new cases are international in nature.[41] The number of cases tripled from 58 cases in 2000 to 170 in 2010. Not only has SIAC's popularity as an in-

35. *See* Rachael Foxton, *Growing in Popularity*, 8 (10) Asian-Counsel 54 (2010).

36. *Id*.

37. *Id*.

38. *See* Seungwha Chang, *Interview- Michael Pryles*, 1 Kor. Arbitration R., (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."

39. Sun, *supra* note 7.

40. *Id*. at 52.

41. *Id.* at 53.

ternational arbitration center grown, but the demand has only expanded the scope of arbitration as well. The SIAC, not only handles typical commercial disputes, but a broad range cases from shipping and maritime disputes to construction, engineering and international trade issues as well.

B. Analysis of Hong Kong's Arbitration Laws and the Rules of the Hong Kong International Arbitration Center

Like Singapore, Hong Kong's arbitration law regarding international arbitration is based on the UNCITRAL Model Law.[42] Like Singapore, Hong Kong has recently updated its arbitration laws to increase its popularity and "arbitration friendly" reputation as an international arbitration center.[43] It also created a "unitary" system of arbitration, removing the distinction between domestic or international arbitration, subject to a few exceptions.[44] UNCITRAL Model Law is applied to both domestic and international arbitrations. The result of such action by Hong Kong was the development of a sophisticated legislative framework complimented by a set of sophisticated arbitration rules which makes Hong Kong a very attractive center for international arbitration.

The new Arbitration Ordinance, based on UNCITRAL Model Law, promotes minimal court intervention, more detailed provisions relating to the authority of the arbitral tribunal to grant interim measures, and provides strict provisions on confidentiality.[45] There are, however, some important differences between the Arbitration Ordinance and UNCITRAL Model law. The most important differences between the two, as noted by John Yuen and John Choong, are that the Arbitration Ordinance:

(i) Applies the UNCITRAL Model Law not only to international arbitrations but to domestic arbitrations as well;
(ii) The Arbitration Ordinance omits the provision providing the default number of arbitrators being three;

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42. Kim M. Rooney, *The New Hong Kong Arbitration Law*, IBA Arbitration News 51 (March 2011).

43. *See* Smith, *supra* note 18, at 18.

44. *Id*. at 18. The author notes that the Swiss Arbitration Rules like the HKIAC Administered Arbitration rules are ultimately based on UNCITRAL Rules.

45. *Id*.

(iii) The Arbitration Ordinance provides for mediator-arbitrators;
(iv) The Arbitration Ordinance allows arbitrators the discretion to limit the amount of recoverable costs;
(v) The Arbitration Ordinance adds more provisions dealing with costs, taxation of costs and costs relating to disputes over the tribunal's fees and expenses; and
(vi) The Arbitration Ordinance adds provisions which limit the liability of the tribunal and related parties.[46]

The Hong Kong International Arbitration Center ("HKIAC") rules apply to arbitrations in Hong Kong, unless the parties agree to different rules. The HKIAC amended its rules in 2008 to adopt a "light touch" approach with minimal involvement of the courts. This is reflected in the fact that courts in Hong Kong follows the New York Convention when it comes to enforcement of the Convention awards and tends to construe public policy claims as grounds to set aside the award very closely.[47] The new HKIAC Administered Arbitration Rules become effective on September 1, 2008 and are very similar to UNCITRAL Arbitrations Rules. The HKIAC Administered Arbitration Rules have also been heavily influenced by the Swiss Arbitration Rules.[48]

Though similar, there are several major differences between the HKIAC Administered Arbitration Rules and the SIAC Rules. As noted above HKIAC has adopted an approach of minimal involvement of anyone other than the

46. Peter Yuen & John Choong, *Hong Kong, Getting the Deal Through-Arbitration 2011, Global Arbitration Review* 203-04 (6th ed. 2011). The default number of arbitrators maybe considered a matter of concern. UNCITRAL Model Law, Article 10 provides that if the parties fail to agree upon the number of arbitrators, the number of arbitrators by default shall be three. However, some courts have noted that under UNCITRAL Model Law, the parties are free to agree upon any number of arbitrators, including an even number. *See UNICTRAL 2012 Digest of Case Law of the Model Law on International Arbitration, United Nations Publication (2012), Chapter III Composition of Arbitral Tribunal, p. 57, citing Thesauraus Inc v Xpub Media Inc., 2007 QCCQ 10436 (CanLII,* http://canlii.ca/t/1t0f3.

47. William Stone, Public Policy in the Enforcement of New York Convention Awards: A Hong Kong Perspective, 2011 Asian Dispute Review (July 2011), at 76. The author further notes that courts tend to greet public policy claims "*with a healthy degree of skepticism*" as dissatisfied parties occasionally over use such claim as a grounds to challenge the enforcement. He further notes that Hong Kong courts have adopted a pro enforcement attitude towards the enforcement of Convention awards.

48. *Id.*

tribunal when making decisions. The SIAC, however, takes a role similar to that of the ICC when administering arbitrations.[49] Also, HKIAC charges lower fees than SIAC, defaulting to a time-based charging model, unlike the scale-based fees (like the ICC model) of the SIAC.

As HKIAC's Amended Arbitration Ordinance was updated, it has become more user-friendly and reflects the international arbitral trends, furthermore, a number of changes were made, amongst them the following five major changes:

1. Unitary regime

The Amended Ordinance abolishes the distinction between domestic and international arbitration. It is considered to be one of the most important changes to the Arbitration Ordinance of 1963.[50] By virtue of abolishing any distinctions between domestic and international arbitration, it created a unitary regime of arbitral practice complying with international norms and practices.[51]

2. Interim Measures

Hong Kong's new ordinance also provides for the tribunal to have more authority in granting interim measures and preliminary orders ex parte. This is addressed in the HKIAC rule, which provides in part:

> [A]t the request of either party, the arbitral tribunal may order any interim measures it deems necessary or appropriate. Such interim measure may be established in the form of an interim award. The arbitral tribunal shall be entitled to order the provision of appropriate security by a party seeking an interim measure.[52]

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49. Sarah E. Hilmer, *Hong Kong 's domestic and international Arbitration Ordinance under a unitary regime based on the UNCITRAL Model Law 2006*, 12(5) Int'l Arbitration L. Rev.61-64 (2009).
50. Smith, *supra* note 18, at 18.
51. *Id*.
52. Hong Kong International Arbitration Centre Arbitration [HKIAC] Rules, Art. 24 (2009).

The authority of an arbitral tribunal to provide interim measures has been growing in popularity. The new ordinance, as well as, the HKIAC Administered Arbitration Rules provide for charging the times and bring Hong Kong in harmony with international trends, as well as the UNCITRAL Model Law.[53]

3. Opt-In

Though HKIAC rules do not provide for an emergency arbitrator, the new arbitration ordinance contains opt-in provisions designed to streamline the arbitration law in Hong Kong. Among the provisions the parties may opt-in are:

(i) For a single arbitrator;
(ii) To consolidate the proceeding;
(iii) The court decides preliminary questions of law;
(iv) May challenge the award on grounds of serious irregularity; and
(v) May appeal against the arbitral award on the question of law.[54]

4. Fee Structure

The HKIAC's rules regarding the arbitrator's fee, as pointed out earlier, are cheaper than those of SIAC.

5. Arb-Med

The current popularity of Arb-Med/Med-Arb in an international context has been adopted in Hong Kong. The new arbitration ordinance permits an arbitrator to act as a mediator after arbitration proceedings have commenced if all parties give their written consents.[55] To quell any misgivings regarding the confidential information obtained during mediation, the new Arbitration Ordinance adopted safeguards to address such concerns, which may lead to

53. Chiann Bao, *An Important Year,* 8(10) Asian Counsel, at 28 (2010).
54. *See* Hong Kong's New Arbitration Ordinance (CAP) 609, Sec. 33(1).
55. Fraces Van Eupen, *Hong Kong Court refuses to enforce a foreign arbitral award following "arb/med" procedure*, 14(4) Int'l Arbitration L. Rev. 25-28 (2011).

its future success. The safeguards combined with the new Practice Direction 31 issued by the Hong Kong judiciary in 2010, which requires consideration of mediation before litigation, has led to a 40 percent increase in mediations handled by the HKIC.

6. ICC in Hong Kong

It should be noted that an additional advantage to arbitration in Hong Kong is the establishment of the ICC office in 2008. This was established by the ICC, not only to acknowledge the growing use of arbitration in Asia, in particular, Singapore, Hong Kong and China, but to increase its availability and services to Asia.

7. Hong Kong's Success

As with Singapore, Hong Kong has made important changes to its arbitration laws and rules. Both SIAC and HKIAC are acknowledged as having arbitration friendly rules and cultures that promote international arbitration in their jurisdictions. Hong Kong, in its role as an Asian international arbitration center continues to promote itself as a major international arbitration hub with arbitration friendly courts. It cannot be said, however, that the Hong Kong's courts are not without controversy. In the case of *Democratic Republic of Congo and Ors v. FC Hemisphere Associates LLC*, the Court of Final Appeal ruled that the doctrine of absolute immunity applies in Hong Kong as it applies in the PRC. The ruling flew in the face of common law and, though it clarified that state immunity was not restrictive but absolute, it has raised some questions about the arbitration friendliness of Hong Kong's courts.[56]

By amending its arbitration laws with the commencement of the new arbitration ordinance, it has strengthened its reputation as a regional hub for international arbitration. Such efforts have helped Hong Kong to maintain a vibrant arbitration practice. In fact, Hong Kong is now becoming a pre-eminent seat of maritime arbitration in Asia, and rivals Singapore as the center for maritime dispute resolutions.[57] Likewise, in 2010 and 2011, Hong Kong was

56. *See* Kathryn Crossley, Case Analysis: Democratic Republic of the Congo and Ors. V FC Hemisphere Associates LLC, asia.legal businessonline.com/analysis/106870/details.espx.

57. Philip Yang, *Maritime Arbitration in Hong Kong, Asian Dispute Rev.*, July 2011, at 78-

the seventh most popular place to sit for ICC arbitration.[58]

It is from this framework of Hong Kong and the Singaporean promotion and expansion as international hubs or centers of arbitration that Korea needs to be judged. Only upon analyzing Korea's current arbitration business in light of the SIAC and HKIAC rules and promotional activities can an adequate picture of Korea as an international player in the business of arbitration emerge.

C. Analysis of South Korea's Arbitration Laws and the Rules of the Korean Commercial Arbitration Board

1. Overview

As Korean companies have increasingly embraced the idea of arbitration as the most preferred method of international dispute resolutions, Korean arbitration has become more popular.[59] However, as noted by some arbitration specialists, the arbitration business in Korea is still lagging behind the more advanced countries in some respects.[60]

Like Singapore and Hong Kong, Korea has a well established arbitration law, going back to 1966, when it first enacted the Korean Arbitration Act.[61] Like Singapore and Hong Kong, Korea has also one officially recognized arbitral institution - the Korean Commercial Arbitration Board ("KCAB"), which was officially established in 1970 under the name of the Korean Com-

81. The author notes that Hong Kong must do more to remain the "pre-eminent shipping centre in Asia" and that it should take more steps, like Singapore, to promote the maritime arbitration market in Hong Kong , such as funding seafarer's training and funding maritime law studies, etc.

58. Ow Kim Kit, *The Future of International Arbitration in Korea, Introduction to the ICC and Statistical Overview of ICC Arbitration in Asia,* ICC-KCCI International Symposium, 2012.

59. Hong Kong's New Arbitration Ordinance (CAP) 609, Schedule 2.

60. Junsang Lee, *Korean Court's Practice under the Arbitration Act and Relevant Issues for Reforming the Arbitration Act*, Asia –Pacific Perspectives on International Commercial Arbitration 2012 UNCITRAL-MOJ-KCAB Conference Booklet (2 Nov- 22-23, 2012), at 101.

61. *See* B.C. Yoon, *et al.*, *Arbitration in South Korea, International Arbitration and Dispute Resolution: Korean Perspective* 5 (Kim & Chang 2012).

mercial Arbitration Center.[62] In fact, Korea has enacted a wide range of mediation procedures within governmental agencies or entities besides the KCAB due to the popularity of arbitration and mediation in Korea, as set forth in the Table 1 below:[63]

Table 1: Alternative Dispute Resolution Entities

Dispute Mechanism	Act	Year of Establishment	Scope	Related Government Organization
Consumer Dispute Settlement Commission	Consumer Protection Framework Act	1987	Mediating consumer disputes	Korean Consumer Protection Board
Financial Dispute Mediation Committee	Act on the Establishment, etc. of Financial Supervisory Organization (Article 51)	1988	Mediating disputes between clients and financial institutions	Financial Supervisory Committee
Construction Dispute Resolution Committee	Construction Industry Framework Act (Article 69)	1996	Mediating disputes b/w employers and contractors in public works	Ministry of Land, Transport and Maritime Affairs
Subcontract Dispute Resolution Committee	Fair Transaction in Subcontract Act (Article 24)	1990	Mediating disputes b/w contractors and subcontractors	Fair Trade Commission

62. It should be noted that the KCAB's predecessor, The Korean Commercial Arbitration Committee was formed in 1966. See the KCAB main website- www.kcab.or.kr.

63. Bryan Hopkins, *Clients perspective: Representing the International Client, ICC Arbitration Today: Bridging the Gap in International Arbitration, Third Annual ICC New York Conference* (2008) (unpublished).

Dispute Mechanism	Act	Year of Establishment	Scope	Related Government Organization
Internet Address Dispute Resolution Committee	Act on Internet Address Resources (Article 16)	2004	Mediating disputes involving internet address	Korea Communications Commission
Grievance Mediation Committee for E-Trade	Framework Act on Electronic Commerce (Article 32)	2000	Mediating disputes related to e-transactions	Korea Institute for Electronic Commerce
Korean Commercial Arbitration Board ("KCAB")	Korean Arbitration Act	1970	Arbitrating and Mediating disputes re domestic and international corporate issues	Independent incorporated association

Though Hong Kong and, Singapore have long been recognized as international centers of arbitration, Korea has not so been recognized. In the last few years, because of its explosive growth, Korea has promoted itself as a center of international arbitration and has started to see its popularity increase, as a center for international arbitration. Although the KCAB has, in fact, been active since 1970,[64] it has only been, in the last few years, that it has seen a large increase in filings. It has been pointed out that in the first quarter of 2009; there was a forty percent increase in cases filed with the KCAB compared to the first quarter of 2008.[65] Overall, the number of international and domestic arbitration cases filed with the KCAB has increased from 197 in 2001 to 318 in 2009, reflecting a sixty percent increase over a nine year period.[66]

64. Note: the Korean Commercial Arbitration Committee was established in 1966 and in 1970 the KCAB was established under the name of the "Korean Commercial Arbitration Association". *See* KCAB, www.kcab.or.kr.

65. Introduction to Arbitration Law of Korea: Practice and Procedure, BKL Guide to International Arbitration in Korea 6 (Juris Publ'g 2010).

66. Yoon *et al.*, *supra* note 61, at 8.

The Korean Arbitration Act or the KAA, seen as too domestically focused in light of Korea's international business expansion, was amended in 1999 to adopt more modern legal practices of arbitration.[67] However, to address an increasing arbitration demand by foreign parties in Korea, the KCAB's rules were also amended several times- first amended in 2000 and then amended again in 2005.[68]

The last changes to the KCAB rules were enacted in 2011 ("Amended 2011 International Rules"), which brought it to sync with Hong Kong and Singapore. The KAA with its amendments, as well as, changes to the KCAB rules now places Korea and Singapore as hubs of international arbitration. It has also addressed the needs of foreign parties in order to become a world class arbitration center. With the changes in place, the next few years will determine how well Korea competes in the arbitration business in Asia.

Like Hong Kong and Singapore, the Korean Arbitration Act, as amended in 1999, is based on or reflective of the UNCITRAL Model Law.[69] The KAA takes a similar approach on issues of territory, court venue and choice of law.[70]

To compete with SIAC and HKIAC and to promote itself as an internationally reliable arbitral institution, the KCAB introduced new rules of international arbitration in 2007, however, the KCAB faced concerns due to the fact that under the 2007 rules, the International Rules did not automatically apply to the arbitration involving foreign parties, but had to be specifically designated in the arbitral agreement.[71] Therefore, the number of international arbitrations that could have taken place in 2007 was more than what the numbers reflect. Though the combined numbers of international and domestic arbitrations held under the auspices of the KCAB in 2007 increased to 872 from 749 in 2006, the number of international arbitrations decreased from 305 in 2006 to 274 in 2007.[72]

The problem the KCAB faced with regards to international arbitration was

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67. *Id.*

68. Hyun Suk Oh & Benjamin Hughes, *Improving Standards, Dispute Resolution-Special Report*, 8(10) Asian Counsel, 36 (2010). The authors pointed out that the proposed changes the KCAB was considering was needed to join the ranks of SIAC and HKIAC.

69. *See* Yoon *et al*., *supra* note 61, at 6.

70. *Id*. at 6.

71. *Id*. at 8.

72. Bryan Hopkins, *supra* note 63.

that the domestic or "original" rules of the KCBA differed from the International Rules in a number of ways. The default language of arbitration under the KCAB was Korean while the International Rules used English, etc.[73]

Taking its lead from SIAC, the KCAB proposed sweeping charge to its rules, which were adopted in 2011. The new rules, not only brought it in line with HKIAC and SIAC, but made it more attractive to foreign parties and enhanced its reputation as an arbitration center.[74] The more important aspects of the Korean Arbitration Act, as well as, the major KCAB rules that were amended in 2011 are set forth in part below.

2. International Arbitration Rules of the KCAB

The International Rules are now the default rules when one party to arbitration is not Korean. The designation requirement of Article 3 has been removed.[75] In effect, therefore, the amended 2011 International Rules apply automatically where the parties have agreed to submit disputes to arbitration under the International Rules or where the parties have agreed to submit the disputes before the KCAB; and when the dispute is an international arbitration.[76] This is reflected in Article 3 of the KCAB International Arbitration Rules (2011) which states:

> Article 3. Scope of Application
> (1) In either of the following cases , the arbitration shall be conducted in accordance with these Rules, which shall be deemed to form a part of the arbitration agreement, subject to whatever modifications the parties may adopt in writing:
> (a) where the parties have agreed in writing to refer their disputes to arbitration under these Rules; or
> (b) where the parties have agreed in writing to refer their disputes to arbitration before the KCAB and the arbitration is an International Arbitration.[77]

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73. *Id*. 12-14.
74. John Rhie & Shinhong Byun, *Development in International Arbitration and Mediation at the KCAB*, 1 Kor. Arbitration Rev., 29 (Apr. 2012).
75. *See* Oh & Hughes, *supra* note 68, at 36.
76. John Rhie & Shinhong Byun, *supra* note 72.
77. Korean Commercial Arbitration Board [KCAB] International Arbitration Rules, Art. 3 (Sept. 1, 2011).

This 2011 amendment to the KCAB Rules was apparently viewed by arbitration practitioners as the most important amendment to the Rules. Not only does it apply to arbitration proceedings initiated after the effective date of September 1, 2011, but it also applies to arbitral proceedings commenced prior to September 1, 2011 if the parties agree to use the new Amended 2011 International Rules.

This change is expected to have a substantial effect on how international arbitrations are conducted in Korea under the administration of the KCAB. As an example, it has been pointed out that had this amendment to the KCAB Rules been in effect in 2009, 78 cases would have been administered in accordance with the International Rules and not the Domestic Arbitration Rules.[78]

3. Expedited Procedure

The new KCAB rules also allow for an expedited procedure.[79] Chapter VI provides in part that if the claim amount does not exceed KRW 200,000,000 or if the parties so agree to the expedited procedures, the arbitrator(s) shall determine the award within three months of the constitution of the tribunal. This is line with Rule 5 of the SIAC rules. Such process is designed to facilitate a quick resolution to the arbitral proceedings, reducing the costs and expense of arbitration.[80]

It should be noted however, that if the amount of the counterclaim exceeds KRW 200,000,000, the Respondent may file a counterclaim within the normal time limits set forth in the Amended 2011 International Rules, while the expedited rules do not apply unless the parties agree to the application of the expedited procedures.[81]

Article 39 of the Amended 2011 International Rules provides in part:

> (1) In the event that the amount of a counterclaim exceeds 200,000,000 Korean won, the Respondent shall be allowed to file such counterclaim only within the time limit set out in Ar-

78. *See* Rhie & Byun, *supra* note 74.

79. *Id.*

80. *See* Rhie & Byun, *supra* note 74, at 31.

81. *Id.* at 31.

> ticle 9 (4) In such cases the arbitration proceeding shall not be administered pursuant to the Expedited Procedures unless the parties agree otherwise.[82]

In another attempt to streamline the arbitration process, the KCAB International Rules under Article 11 provides for the appointment of a sole arbitrator unless the parties petition instead for the appointment of three arbitrators.

4. Interim Measures

Courts are very supportive of arbitrations. Courts usually do not intervene in cases and only do so in accordance with Article 10 of the Korean Arbitration Act. Article 10 provides that interim measures may only be requested from a court during or after arbitration. Primarily, interim measures can be requested for two main reasons:

(i) Provisional attachments issued to secure the execution of monetary claims; and
(ii) Provisional injunctions issued to secure the execution of non-monetary claims.

It has been noticed that interim measures may be obtained from Korean courts easier than in other jurisdictions and, in fact, provisional attachments orders may be requested on an ex parte basis.[83]

5. Challenges to an Award

The Korean Arbitration Act provides for the challenge of an arbitral award on grounds similar to the UNCITRAL Model Law. However, public policy is looked upon as "good morals and other forms of social order of the republic of Korea". There is no opt-out or op- in like Hong Kong.[84] Article 36 of the KAA sets out the grounds for challenging the arbitral award. It provides in part that courts may set aside arbitral awards in the following cases:

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82. *See* KCAB International Arbitration Rules, *supra* note 77.
83. *See* Yoon *et al*., *supra* note 61, at 12.
84. *See* KCAB International Arbitration Rules, Chapter VI (2011).

(a) Where the party seeking to set aside the arbitral award furnishes proof that:
   (i) a party to the arbitration agreement was without legal capacity under relevant governing law at the time of the agreement, or the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon under the Law of the Republic of Korea;
   (ii) the party seeking to set aside the award was not given proper notice of the appointment of an arbitrator or the arbitral proceedings or was otherwise unable to present its case;
   (iii) the award deals with a dispute not subject to the arbitration agreement or a matter outside the scope of the arbitration agreement provided that if the award can be separated into portions dealing with and not dealing with subjects of the arbitration agreement, only that portion of the award which is not of the subject of the arbitration agreement may be set aside; or
   (iv) the composition of the arbitral tribunal or the arbitration proceedings were not in with the agreement of the parties, unless such agreement was in conflict with any mandatory provision of this Act, or failing such agreement, was not in accordance with this Act; or

(b) Where the court finds on its own initiative that :
   (i) The dispute subject to the tribunal award is not capable of settlement by arbitration under the law of the Republic of Korea; or
   (ii) The recognition or enforcement of the award is in conflict with the good morals and other forms of social order of the Republic of Korea.

6. Med-Arb

Unlike Hong Kong, the KCAB does not have an arbitration/mediation or med-arb ordinance or rule allowing mediation during the arbitral process. Its domestic rules does, however, allow for mediation prior to the commence-

ment of arbitral proceedings.[85] As the Korean society favors dispute resolution over litigation, it is not uncommon for judges and arbitrators to "change hats" and act as mediators on occasion, regardless of whether an ordinance exists or not.[86] Though the KCAB offers mediation services pursuant to Article 18 of the Domestic Rules, most parties to arbitration rarely take advantage of Article 18 and settle during the arbitration process.[87] That being said the KCAB does, however, provides mediation services for various participants or parties, handling approximately 800 mediation cases per year.[88] The mediation services provided can be divided into three categories:

(i) KCAB mediation services provided upon request of one of the parties;
(ii) Statutory Mediation- services provided in accordance with the Foreign Trade Act; and
(iii) Court Annexed Mediation- mediation services which are requested by Korean courts.

7. Recognition and Enforcement of Awards

Korea, like many jurisdictions, is a member of the New York Convention. The procedural requirements for enforcing foreign arbitral awards are set forth in Article 37 of the Korean Arbitration Act, which provides that the recognition or enforcement of the award shall be made by recognition or by an enforcement judgment of the court. It has been noted that the Korean courts interpret the New York Convention ("Convention") along similar lines of other international jurisdictions and are reluctant to set aside awards. For example, Korean courts have held that the use of public policy as grounds to justify the refusal to enforce international arbitral awards must be narrowly construed.[89] In other words, Korean courts do not take an expansive view of

85. KCAB Domestic Arbitration Rules, Sec.18 (Sept. 1, 2011).

86. Sungwoo Lim, *Mediation in Arbitral Proceedings (Arb-Med): A Korean View*, 1 Kor. Arbitration Rev., at 40 (2012).

87. *Id*. at 42.

88. Rhie & Byun, *supra* note 72, at 32.

89. Justin D'Agostino & Kay-Jannes Wenger, *8(8) Asian Counsel Special Report-South Korea 47 (2010).*, citing the ruling in Supreme Court [S. Ct.] 2001Da20134, Apr. 11, 2003 (S. Kor.) and Supreme Court [S. Ct.] 2006Da20290, May 28, 2009.

using public policy to set aside international awards, only doing so on rare occasions. The recognition and enforcement of foreign awards, therefore, depends on whether the New York Convention ("Convention") applies or does not apply. Article 39 of the KAA addresses this situation by stating:

> (1) Recognition or enforcement of a foreign arbitral award which is subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards shall be governed by that Convention.
> (2) Article 217 of the Civil Procedure Act, paragraph 910 of Article 26 and Article 27 of the Civil Enforcement Act shall apply mutatis mutandis to the recognition or enforcement of a foreign arbitral award which is not subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[90]

Therefore, a Korean court will enforce an arbitral award not subject to the Convention if:

(i) The award is final and binding;
(ii) The jurisdiction of the arbitral tribunal is consistent with the Korean law;
(iii) The award is not in conflict with the good morals or public policy of Korea; and
(iv) The country in which the award has been rendered provides reciprocity to Korean judicial decisions and arbitral awards.[91]

As pointed out by numerous scholars, Korean courts have adopted the view that arbitral awards must be enforced unless specific grounds exist for setting it aside.[92] This view was echoed by the Korean Supreme Court in a 2009 decision in which it declared that a court of execution could not deny enforcement or recognition of an award on the basis of its assessment of the

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90. Arbitration Act of Korea, Chapter VII Art. 39 (1999).

91. See Yoon *et al.*, *Korea, Getting the Deal Through-Arbitration 2011*, Global Arbitration Rev., at 257 (6th ed. 2011).

92. Byunchol Yoon & Richard Menard, *Role of Korean Courts in International Arbitration*, 1 Kor. Arbitration Rev., at 15 (2012).

tribunal's application of the governing law to the evidence.[93]

Because of Korean courts' favorable or pro-arbitration stance, there are few cases in which Korean courts have set aside awards. The pro-enforcement attitude of the Korean courts towards domestic arbitral awards and foreign awards have resulted in few instances of the courts failing to enforce awards. In fact, there are no known cases in which a Korean court has intervened to frustrate an arbitral proceeding.[94] As such, Korea is developing a reputation as a reliable center of arbitration free from the fear of constant interference from the local courts and stigma that some jurisdictions, such as India and Indonesia, have of failing to properly enforce arbitral awards in accordance with the New York Convention.

III. Observations

It is apparent from a review of the changes to the International Rules of the KCAB, as well as, changes to the KAA, that Korea is poised to become a hub of international arbitration in Asia. International arbitration is increasing in Korea, which reflects not only Korea's expansion in cross border transactions but an awareness to the foreign parties as to the modernization of the KCAB's International Rules.[95] As Koreans are generally non-litigious in nature (though that may be changing) and prefer to resolve disputes in private or a more private forum than the courts, both domestic and international arbitrations will increase. However, considering the number of disputes involving Korean companies, the HK IC, SIAC and the ICC seem to handle more international arbitrations.[96] Reasons of Korea's traditional lack of popularity as an arbitration center are several.

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93. *Id*. Yoon and Menard cite Supreme Court Decision No. 20060a20290 (rendered May 28, 2009) in supporting the view that the Korean Supreme Court has refused to expand the grounds of "public policy" of setting aside an award. They point out that the Korean Supreme Court, in that decision, did allow courts to reject enforcement of a foreign arbitral award without a separate procedure to cancel or terminate the award if it distinctly recognized that the party requesting enforcement of the award committed a fraudulent act.

94. Yoon, *supra* note 61, at 13.

95. Arbitration Act of Korea, Chapter VI Art. 36 (1999).

96. In 2009, the number of international arbitrations administered by the KCAB increased to 78, representing a two thirds increase from 2008.

Until recently, Korean chaebols and major companies have usually given in to the demands of international contracting parties to utilize arbitral regimes or arbitral seats outside of Korea. The Korean chaebols failed to emphasize Korea in general and the KCAB, in particular as a legitimate center for the resolution of international disputes. Foreign companies favoring the ICC in Paris, HKIC or SIAC usually persuaded Korean companies to arbitrate in HK, Singapore, Paris or even New York. This was due in part because of a perceived lack of English speaking qualified arbitrators in Korea, or a Korean bias on the part of the KCAB.

Considering the above mentioned concerns, the KCAB has taken steps to address past complaints of foreign parties. The KCAB has updated its rules to reflect modern international arbitration trends. It has also actively recruited qualified arbitrators of foreign and domestic to raise the standards of service it provides, similar to that of HKIAC or SIAC. It also has taken steps to attract highly qualified and internationally recognized arbitrators from around Asia and elsewhere in order to improve its conference capabilities. It has begun a vigorous promotional campaign, hosting international conferences as well as providing training and educational activities for lawyers, arbitrators and law students.[97] The KCAB has hired additional staff members and started a vigorous outreach program. It has also amended its rules to reflect the best practices and committed itself to providing a high quality of service, including the establishment of the International Arbitration Committee as required by Article 1 of the KCAB International Arbitration Rules (Sept. 1, 2011). Obviously, the steps taken by the KCAB have been met with success as the KCAB has become a very competitive arbitration center and is experiencing substantial growth. The number of international arbitrations registered with the KCAB in 2011 was 77, representing an increase of 48.1 percent to the previous year.[98]

On the basis of the above mentioned steps taken by the KCAB, it is not surprising that Korea (primarily Seoul) is becoming more popular as an arbitration center and, arguably, is emerging as an alternative to other 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

97. KCAB, 2011 Annual Report (2011).

98. *Id*. at 10. The report further states that such an increase reflects the fact that arbitration is the preferred method of dispute resolution in Korea.

Resolution Center (Seoul IDRC) in 2012. The MOU, which takes effect in 2013, enables the SIAC to be a partner institution with the Seoul IDRC and allows the SIAC to offer local access to the SIAC users in Korea.[99]

It is evident that the hubs of Hong Kong, Singapore and Korea update their relevant arbitration rules and regulations to reflect the current trends in international arbitration. All three countries have addressed international arbitral concerns, including expedited procedures, arbitral awards and UNCITRAL Model Law concerns. Nonetheless, though Korea is emerging as an arbitration center, it is still viewed less positively than Hong Kong or Singapore as an international arbitration center, though many multinational companies or entities actively using arbitration are headquartered in Korea.[100] The large increase of Korean users of arbitration is evident from the number of ICC arbitrations filed in 2009 showing thirty one parties in ICC arbitrations were from Korea, as opposed to fifteen from Hong Kong.[101] This may change over time if Korea continues to promote itself as a reasonable alternative to other arbitration centers in Asia. In fact, Korea's emergence as an international arbitration center in the last few years has been noted by scholars and arbitrators alike.[102]

IV. Recommendation

To increase Korea's popularity as a regional leader in dispute resolutions, it is clear that the KCAB as well as the Korean industry need to take a number of steps to enhance Korea's reputation as an international arbitration center. Though many of the primary measures have been taken by the Korean government or the KCAB, at least seven additional measures should be imple-

99. *See* SIAC, www.siac.org.sg.

100. In 2010, Korea was one of the top three countries in ICC arbitration involving Asian countries. However, Hong Kong and Singapore were among the top 7 selected cities and countries for ICC arbitration in the world. Korea was not listed in the top 10.

101. *See* Yoon, *supra* note 61, citing 21 ICC International Court of Arbitration Bulletin, No. 1 (2010).

102. *See* Chang, *supra* note 38. 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."

mented to help foster Korea's reputation as a regional, if not international, hub of arbitration.

First, KCAB should encourage Korean companies to demand arbitration of international disputes to be handled in Korea through the KCAB or ICC. Too many Korean companies agree that dispute resolutions including arbitrations take place outside of Korea when negotiating contracts with foreign entities. Making the case for Korean companies to start demanding for the KCAB arbitration can be done with more meetings and dialogues between the KCAB and the Korean companies or the law departments of Korean companies regarding the KCAB arbitration..

Second, the KCAB should start promoting the specific kinds of international arbitration in Korea, such as maritime arbitration. As many shipbuilders and carriers are headquartered in Korea, Korea like Singapore should encourage maritime arbitration. Singapore has adopted the SCMA which is a driving force behind the recent increase in maritime arbitrations in Singapore. Likewise, the KCAB, as well as, Korean shipbuilders and carriers can begin to press for maritime arbitrations in Korea. Considering that the world's largest shipbuilders are headquartered in Korea, the KCAB should make this a top priority.

Third, although the KCAB has increased the number of English speaking arbitrators, it should encourage more English speaking arbitrators and arbitration lawyers to become actively involved with arbitration in Korea. Hong Kong and Singapore have the advantage with regards to English speaking arbitrators and have used their abundance of English speaking arbitrators and arbitration lawyers to their advantage when marketing the arbitral centers. Korea must do more to increase the number of fluent English speaking arbitrators in its community. This will only attract more international arbitration businesses. Besides attracting more English speaking arbitrators, the KCAB should promote its arbitration facilities throughout Asia, if not globally. Both Hong Kong and Singapore promote their arbitration facilities on a regular basis. Besides the number of international arbitrators or arbitration lawyers that will use KCAB facilities, the facilities themselves need to be promoted as well.

Fourth, though Korean companies in general should promote arbitration in Korea, Korean construction companies, more specifically, should increase the use of the KCAB as an arbitration center. Despite the fact that the number of construction cases arbitrated under the KCAB increased by 24.2 % in 2011 to

113 total cases, the majority of the cases were domestic and not international. Korean industry needs to do more to promote the KCAB as an arbitration center internationally.[103] Korean construction companies are known for handling many international projects, especially in the Middle East, and should therefore promote Korea as the seat for international arbitration.

Fifth, Korean law firms should continue to build up their arbitration practice teams to facilitate the use of arbitration in Korea. Though Korean law firms are starting to build up arbitration practice teams, more firms should add arbitration to the services it provides. As more companies come into Korea because of the KORUS FTA, the popularity of arbitration is predicted to increase. With more and more international law firms opening up offices in Korea, more emphasis will be placed on sophisticated leading edge arbitration practices. In order for Korean law firms to stay competitive, they must emphasize arbitration and dispute resolution as major practice areas of the firm.

Sixth, another step the KCAB should take in promoting its arbitration services is to advertise the fact that Korean courts are extremely reliable when it comes to enforcement of arbitral awards, and that courts very rarely will set aside or refuse to enforce awards- whether domestic or international. This is a major point. A number of jurisdictions in Asia do not promote enforcement of arbitral awards as consistently as the Korean courts.

Lastly, Korea in general and Seoul in particular needs to heavily promote and advertise the fact that it, not only has a state of the art transportation system, modern conference facilities, top quality hotels and shopping districts, but it is a very safe, convenient and modern place in which to hold international arbitrations, especially those originating in Asia. Seoul, as one of the leading cities in Asia, needs to leverage this fact when promoting arbitration. It is a place where arbitration may take place without concern for personal safety or proper infrastructure, conference facilities and lodging. It is in essence a reasonable place in to hold international arbitrations.[104]

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103. 2011 Annual Report, *supra* note 98 at 10.

104. BKL Guide to International Arbitration, *supra* note 65, at 8. The argument that safety, infrastructure and major facilities should help promote Seoul as an arbitration hub, has been mentioned in the BKL Guide and should be given more attention.

V. Conclusion

Due to Asia's growing importance in international trade, international commercial arbitration is becoming more and more popular across the region. Because of a variety of reasons, Hong Kong and Singapore have become popular arbitral centers and seats of international arbitration over the last decade. Recently, however, Korea has emerged as an alternative to Hong Kong and Singapore, though, not quite as popular.

Hong Kong, Singapore and Korea have all changed their arbitration rules and regulations to adapt to the increasing demand for dispute resolution mechanisms by international companies. Though Korea does not yet have the popularity of Singapore or Hong Kong as a center for international dispute resolution, recent steps have been taken to update its rules, as well as to increase its services and reputation as a reliable provider of international dispute resolution services with promises to elevate Korea as an acknowledged regional leader in the business of dispute resolutions. The future of international arbitration in Korea depends on how well the KCAB, Korean companies and the Korean government implement and drive home the changes needed to be impressed upon to communicate to the international business community that international arbitration in Korea is a top priority.

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