

Ad Hoc Arbitration by the SMAA

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1. Introduction

There are several ways to solve maritime related legal matters. Lawsuit in a court is the official way operated by the government. Arbitration is the private way to solve legal disputes. Bringing about lawsuit to the court does not need the acceptance of the opposing party to raise the dispute to the court. However, raising arbitration requires party's agreement.

Almost all of countries operate the arbitration. Korea is also one of such countries. Several countries such as US, UK, Singapore and Japan offer the maritime arbitration. However, Korea did not have special arbitration focused on the maritime related matter until 2018 February.

2. Establishment of SMAA

There are two different kinds of arbitration. The one is the institutional arbitration and the other is the ad hoc arbitration.

The Korea Commercial Arbitration Board (KCAB) is the typical example of the institutional arbitration. It means that the institution deeply involves in the arbitration procedure. The institution involves in the selection of arbitrators. Documents related to the arbitration are collected by the institution and sent to the parties and arbitrators directly by it. Arbitration fees are also collected by the parties and paid by it to the arbitrator.

On the other hand, LMAA in UK, SMA in US and SCMA in Singapore are good examples of the ad hoc arbitration. They refrain from involving arbitration procedure. Parties in the arbitration directly selects arbitrators, the arbitrators lead the arbitration without depending on the institution. Arbitration fees are directly paid to the arbitrators by agreement between arbitrator and parties. In the shipping business, the ad hoc arbitration is much widely selected than the institutional arbitration.

Almost 90% of legal disputes involved in the shipping business had been solved in the LMAA in London or UK courts. Even though the KCAB deals with maritime arbitration, the number of maritime cases is ranging from 15 to 20 cases a year. Since 2004, the

campaign to establish the special maritime arbitration in Korea had been carried out. In 2004 the Korean government and KMI carried out a research on the establishment of the Korean Maritime Arbitration Board. However, the effort failed. In 2015, the second campaign started to establish the Korean maritime court and maritime arbitration board in Korea by the Committee for establishing the Korea Maritime Court and Arbitration.

In 2017, the committee carried out a survey to 100 experts in the shipping business whether they really want to different type of arbitration from the KCAB. The result showed that the Korean shipping business prefers ad hoc arbitration to the institutional arbitration. The committee decided to establish an ad-hoc maritime arbitration. For operating the ad-hoc arbitration, an entity is required to help the procedural matter for establishment of the arbitration. On February 22, 2018, the Seoul Maritime Arbitrators Association (SMAA) was officially established and launched its operation to help ad-hoc arbitration in Korea. Mr. Byung Suk Chung, former president of Korea Maritime Law Association was elected as the first president of SMAA

According to the arbitration rules, the arbitration starts by the applicants' sending the notice of arbitration to the opposing party. The arbitration proceeds by the agreement between the arbitrator and parties on the main point of arbitration. The parties select an arbitrator respectively among listed arbitrators in advance prepared by the SMAA. The arbitration fee is paid by the parties to the arbitrator directly. The parties will not pay any administrative fees to the secretariat. Only one secretary for the SMAA exists and helps the arbitration proceeds.

3. Procedural matter

According to the SMAA's arbitration rules, parties agreement to the effect that the legal issues shall be solved by the SMAA's ad-hoc arbitration, is required for commencing the SMAA's arbitration. The parties selects arbitrator from the listed arbitrator in the arbitrator list. The two arbitrators may select the presiding arbitrator. The parties and arbitrators make agreement on the arbitration procedure and arbitration fees.

Thereafter, the arbitration will proceed as followings.

- (i) The applicant submits application papers to the arbitration panels and sends the notice to the respondent. The respondent will submit the reply to the applicant and it

submits the reply to the respondent.

- (ii) The presiding arbitrator selects the first date for arbitration and starts hearing. The respondent and the applicant attend before the arbitration panels with their representatives.
- (iii) Parties can fortify their position thru the witness. Arbitrator can impose interim measure such as order for prohibiting repair damaged part. After the presiding arbitrator completes hearing, he writes arbitration award. The arbitration panel sends the arbitration award to the applicant and the respondent. The arbitration award shall be kept in the SMAA office.

4. Effect of arbitral award of the SMAA

The advantage of the arbitration is the speediness and flexibility. The international tendency is to follow the UNCITRAL Model law which concludes the dispute in a single instance and does not allow appeal the arbitration to the court. Korea adopts UNCITRAL Model law in the Korean Arbitration Act. However, the appeal to the court is allowed in the UK even in case of mistake in the legal issue. Of course, the Korean Arbitration Act is applicable to the SMAA ad-hoc arbitration.

The arbitration award has the same as the court judgment according to the Korean Arbitration Act (Art. 35). Therefore, there is no difference in effect between the court judgment and arbitration award. The creditors are able to enforce the execution against the debtor's property to satisfy their rights for claims based on the arbitration award which they obtained from the SMAA's arbitration. The creditor as the applicant submits the arbitration award to the court and receives the decision for the execution. And then, the creditor goes to the execution office. It submits the decision document for the execution to the execution officer. The officer carries out the execution for the creditor.

The creditors as the applicant can apply for the execution against the property of the debtor as the respondent in the arbitration, even in a foreign country as long as such country is a party to the New York Convention. The Convention makes the arbitration award in a contracting state enforceable, even in a foreign state which is a party to the Convention. It is a very attractive aspect of the arbitration that the arbitration award has wider acceptance than court judgment owing to the presence of New York Convention in respect of execution in a

foreign country.

The arbitration award is not released to the outside without party's consent. However, it can be used for the academic purpose unless there is no objection from the parties within 30 days after the arbitration award was made.

The *ad hoc* arbitration supported by the SMAA has two special schemes such as the special arbitration for small claims and collision case. Maritime cases with total claims under the 100,000 US dollar may require speedy decision, the arbitration by single arbitrator with document only without hearing is allowed. The special arbitration for the collision damages is also available. Special arbitration panels are listed for collision arbitration. Many collision cases occur in Korea. The special maritime arbitration of solving disputes on collision damages may attract lots of cases.

5. Conclusion

Several dozens of Korean maritime law celebrities established the SMAA on February 28, 2018. The SMAA's main role is supporting the ad hoc arbitration in maritime cases in Korea. The award rendered by the ad hoc arbitration supported by SMAA has the same power as the court judgment according to Korean Arbitration Act. As a February 28, 2018 two different maritime arbitrations start to co-exist in Korea such as the KCAB (Korean Commercial Arbitration Board) and SMAA. The former is the typical institutional arbitration while the latter is a kind of ad hoc arbitration similar to the LMAA and SCMA.

Currently, parties involved in maritime related dispute in Korea have an option between the ad-hoc and institution arbitration. New Korean maritime arbitration system is not limited to domestic cases. It is widely opened to the foreign customer. The SMAA prepared for English version of Arbitration Rules. It can be found in its homepage (smaa.kr). Now that lots of trading of commodities among Korea, China and Japan carries out, we expect the maritime related disputes will be increased. The ad-hoc arbitration supported by SMAA may play as a good solution to the dispute involved in among three countries. For more information in detail, please visit the website of SMAA (www.smaa.kr).