

New Development regarding Establishment of Korean Admiralty Court and Maritime Arbitration

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1. Establishment of Korean Admiralty Court

The Republic of Korea does not operate a special and independent admiralty court as of today. During the year 2015, there was a campaign to establish an admiralty court by several entities including the Korean Maritime Law Association, the Korean Ship owner's Association and the Korea University School of Law Maritime Law Research Centre. An international conference was also held in September, 2015.

As a result of these efforts, the maritime society welcomed the establishment of the special divisions in the Seoul High Court and Seoul Central District Court on February 22, 2016. Four special divisions (one for the High Court) in the lower courts deal mainly with maritime or admiralty cases. However, the judges in these divisions are not specially trained for, or experience in judging, maritime cases, which is different from similar courts in Singapore, China and Hong Kong.

Four bills to establish the admiralty court has been on the table of the Korean Parliament since 2016. Several seminars calling for the establishment of the court were held at Seoul, Pusan and Inchon. However, no progress has been made in the Parliament. The reason why the campaign is unsuccessful is partly because the numbers of the cases dealt in the Korean courts are too small. It is estimated that about 600

maritime related cases are solved in the Korean court. It seems that first priority should be put on increasing numbers of maritime cases solved by the Korean court. Another obstacle against the establishment of the court is due to the regionalism. City of Pusan and Incheon strongly want to establish the admiralty court in its location. However, Korea Maritime Law Association supports to establish the court in Seoul area and Pusan at the same time.

Now, we pass the transitional period from the view point of the establishment of the admiralty court. It is a good sign of the improvement that Korean courts established special division for maritime cases in 2016. If we have enough cases for a judge to handle exclusively, we may designate a judge to handle the maritime cases only. By doing this, Korean court will give good impression to the stake holders that their cases are positively cared by the specially educated judge for maritime law. The special division may gain the popularity among stake holders such as the ship owners, cargo interest, charterers and ship builders.

2. New Development regarding Maritime Arbitrations in Korea

There are two ways to solve maritime related disputes in Korea. Court proceeding is the most widely selected method. However, Korean maritime community has shown a strong tendency to solve the dispute in the arbitration in London. It is estimated that about 300 maritime related cases involved in Korean shipping company, marine insurance company or shipyards has been submitted to the LLMA in London every year. Even though the KCAB gains popularity recently so that the number of its case increased, there is no change of the number of the maritime related case dealt by the KCAB. Only about 20 maritime related cases are submitted to the KCAB annually.

The committee for establishment of admiralty court and arbitration (Prof. In Hyeon KIM as the chairman) circulated questionnaire to find out the necessity of the industry

on the arbitration. The maritime industry showed a clear sign that they need ad hoc arbitration like SCMA and LMAA style rather than institutional arbitration like the KCAB. About 40 specialists including maritime law professors, maritime lawyers, and representative of ship owners and ship yards gathered to establish the ad hoc maritime arbitration. Seoul Maritime Arbitrator's Association (SMAA, <http://smaa.kr>) was established on February 22, 2018. The SMAA supports the ad hoc maritime arbitration in Korea. The arbitration is led by the arbitrators, the applicant and respondent, not by the institution (SMAA). It is opened to foreign stake holders. A foreign ship owner may select the ad hoc arbitration supported by the SMAA with the Korean counter party.

The SMAA has a special arbitration known as "special collision arbitration". The ship owners involved in ship collision accident may solve the disputes according to collision arbitration rules in the SMAA. They may select arbitrator(s) from the listed arbitrator including ex-ship's captain, maritime lawyers, maritime consultants, marine adjusters. It is expected that the SMAA collision arbitration can provides more speedy and cheaper than any other way of dispute resolution methods, to the stake holders.

In the meantime, the KCAB also established a special division of the maritime arbitration at Pusan this year called as "Asia-Pacific Maritime Arbitration Centre". It is still a kind of institutional arbitration.

Therefore, currently two specialized maritime arbitrations co-exist such as the SMAA as an ad hoc arbitration, and the SPMAC as the institutional arbitration. Stake holders may select one of two arbitrations, depending on the different nature of the arbitration.

3. How to Increase the Number of Maritime Cases in Korea

Establishment of specialized admiralty court or maritime arbitration does not bring about maritime related cases automatically. One of obstacles in Korea to develop our

own admiralty court and maritime arbitration is that numbers of the maritime related cases submitted to Korean court or the KCAB has not been increased over last 30 years. During last 20 years at least cargo volumes from and to Korean ports increased 4 times. However, the cases submitted to Korean courts and KCAB has been no change at 500 cases and 20 cases respectively.

Further effort to publish, in a regular basis, maritime cases by the Korean court in Korean and, English, Japanese and Chinese as well is required and has been done by Korea University Maritime Law Research Centre. It publishes "Korea Maritime Law News Update" every 3 years. It recently published Vol. 25.

Only two or three schools among 25 Korean law schools open maritime law lectures. The number of the Korean law school to teach maritime law should be increased.

Interaction between judges in Korean court and academics should be increased to exchange views on maritime law. In this sense, the regular meeting among maritime related judges, maritime law professors and other persons in charge of maritime law from industry has been held regularly since 2016, organized by the Korea Maritime Law Association and the Maritime Law Judge's Study Group.

We also need to take lessons from UK, China, Singapore to establish and operate the admiralty court and maritime arbitration.