



**CHAMBERS**  
Global Practice Guides

# Shipping

South Korea – Law and Practice

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# SOUTH KOREA

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## **LAW AND PRACTICE:**

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

# Law and Practice

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# SOUTH KOREA LAW AND PRACTICE

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Jipyong have a renowned shipping and maritime practice. The team's expertise extends across the full spectrum of shipping, maritime, international trade, insurance and aviation law. Specifically, the team's capabilities and experience include: accidents at sea – including collisions, sinking, oil spillage, fires and explosions; bills of lading; cargo loss and damage; attachments and arrests; bankruptcy and rehabilitation; charterparty and contract of affreightment; negotia-

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## 1. Overview

### 1.1 The Top Ten Flag States

According to this year's data, Korea is ranked sixth among the top Ten flag states, right after Singapore. It is reported that, as of January 2017, Korea owns a total number of 1,504 vessels, which adds up to 85,654,000 DWT. With regard to the total fleets controlled, Korea ranked eighth, with a fleet value of USD21,201 million.

### 1.2 Maritime Conventions

Korea has ratified numerous conventions, including the following:

- the International Convention for the Safety of Life at Sea, 1960 (SOLAS);
- the Convention on Facilitation of International Maritime Traffic;
- the Convention on the International Regulation for Preventing Collisions at Sea, 1972 (COLREG);
- the International Convention on Maritime Search and Rescue, 1979 (SAR);
- the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (as amended in 1962 and in 1969);

- Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT); and
- Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT).

On the other hand, Korea is not a contracting state to the following treaties:

- the International Convention on Limitation of Liability for Maritime Claims, 1976 (as amended by the 1996 Protocol);
- the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, and Protocol of Signature (the Hague Rules);
- Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1968 (the Hague-Visby Rules);
- the United Nations Convention on the Carriage of Goods by Sea, 1978 (the *Hamburg Rules*);
- the International Convention for the Unification of Certain Rules with respect to Collisions between Vessels, 1910; and
- the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, 1926 (the Brussel Rules).

It should be noted, however, that Korea has enacted domestic legislations reflecting the contents of certain maritime conventions; for instance, Chapter 5 of the Korean Commercial Code (“KCC”) is generally understood to be based on and reflect the Hague Rules and the Hague-Visby Rules.

### 1.3 Classification Societies

The Korean Register of shipping (KR) is the Classification Society established under the Ship Safety Act. Korea also recognises internationally certified classification societies such as Lloyd’s Register (LR), Det Norske Veritas (DNV), American Bureau of Shipping (ABS), Bureau Veritas (BV), Germanischer Lloyd (GL), Registro Italiano Navale (RINA), Nippon Kaiji Kyokai (NK) and China Classification Society (CCS).

### 1.4 Radio Accounting Authorities

Unlike other countries that outsource RAA (Radio Accounting Authorities) management to large-scale radio communication entities which are enlisted as members of the international associations, the Korean government has been using the “KR01” code as a single RAA, while also consigning its management to a domestic radio operator. Since the rapid development in satellite communication technology has led to the majority of wireless communications being conducted through satellite, the Korean government’s current and official position is to maintain a singular code without expanding the scope of approved RAA codes within the jurisdiction.

### 1.5 Types of Registration

Article 3 of the Korean Ship Registry Act provides that the registration of ships is allowed only for the establishment, preservation, transfer, change, restriction on disposition or extinction of the ownership, mortgage or lease of ships. Accordingly, under Korean law the owner, mortgagee or lessee of a ship may register its rights and the changes or restrictions made thereto in the ship’s registry. In addition, pursuant to the International Ship Registration Act, a domestic ship may be registered as an international vessel (for more details on the Act, see below).

### 1.6 Discounts on Registration and Taxes

According to Article 12-(1) of the Local Tax Act, the amount of acquisition tax on the vessel shall be calculated by applying the following standard tax rates to the tax base (which will be calculated, in general, based on the vessel’s price at the time of registration):

- acquisition through inheritance: 2.5%;
- gratuitous acquisition, other than acquisition through inheritance: 3%;
- original acquisition: 20.2%;
- acquisition through importation and acquisition through construction of custom-built ships: 20.2%; and
- acquisition due to any other reason: 3%.

With regard to the above, it is worth noting that Korea enacted the International Ship Registration Act in 1997, in order to prevent domestic ships being registered under a foreign flag of convenience seeking lower tax, and to induce ship registration in Korea. Under this Act, certain taxation support and other governmental benefits are given to vessels registered as international ships.

In addition, pursuant to the Special Restriction on Local Taxation Act and the Special Act on the Establishment of Jeju Special Self-Governing Province and the Development of Free International City, a 2% deduction is applied to the acquisition and/or registration taxes of ships obtained under the purpose of being registered in Jeju as an international ship, and a 50% deduction on property taxes is granted to ships that are currently registered as such.

## 2. Ship Finance and Securities

### 2.1 Registration of Documents

There are no procedures in Korea that require the parties to register all ship financing-related documents *en bloc*. However, under certain laws and regulations, a relevant government agency may request the parties to submit certain documents or materials in relation to a specific financing process that requires the government’s authorisation or approval. For instance, under the Korean Ship Investment

Company Act, the parties will have to file for the registration of incorporation regarding the establishment of an overseas SPC (Special Purpose Company), by submitting the articles of incorporation, the application for shares, the company investigation report, minutes of the inaugural meeting, etc. Under the Foreign Exchange Transaction Rules, the parties are also required to report to the Ministry of Maritime, certain foreign overseas direct investments, loan agreements and security contracts, etc, that are to be executed during the ship finance process.

## 2.2 Requirements for Translation

Upon reviewing documents in foreign languages, most government departments will ask for a Korean translation to be attached.

## 2.3 Modes of Ship Finance Registrations

There are no procedures in Korea that require the parties to register the ship finance transaction per se. Accordingly, it can be said that registrations of project financing or syndicated loans are either unnecessary or unavailable. On a separate note, for security purposes, the vessel mortgage registration is most preferred and commonly used in relation to ship finance.

## 2.4 Collateral Guarantees

In addition to asset-based loans such as ship mortgages, financial institutions may hold future earnings generated from a ship's COA (Contract of Affreightment) and/or charterparties as security in ship finance. This form of collateral became popular in Korea during the 1980s when the collateral value of vessels decreased due to recession in the shipping industry economy. Other common collaterals may include pledges on shares of SPC, and payment guarantees from the shipping company.

In addition, assignment of the rights to claim for hull insurance proceeds and pledges on the SPC's share may also be used for security purposes.

## 2.5 Information Available at the Public Registry

In general, the Korean Supreme Court website ([www.iros.go.kr](http://www.iros.go.kr)) provides its users with a one-stop public registration service through which any person may apply for, check and gain electronic copies of real estate or corporation registries, etc. The information marked in the registry does not differ between users within and outside the jurisdiction.

However, this online service does not cover ship registries, so users are required personally to visit the registry office to obtain recorded contents. Once any user applies for the perusal of a ship registry, by submitting the vessel's name, port of registration and tonnage, he or she will be able to access all information certified by the registry, including information on ownership and other rights over the vessel.

## 2.6 Issuance of Certificates to be Used Abroad

Certificates officially issued by governmental institutions are only provided in the Korean language, without any translations, except for a very few documents, such as resident registrations. The users shall have to prepare the translations to such certificates personally, when necessary.

## 2.7 Information Certified Public Registry

The cover of a public registry shows the basic information of the subject property, such as the type and name of vessel, port of registration, gross tonnage, type and number of engines, date of acquisition, nationality, etc. The next sections reflect the ownership status and other registered security rights, such as mortgages and leases regarding the subject vessel or property. For each registered right, the public registry displays the names and addresses of the holder of rights, the cause and date for such acquirement, and any changes made thereafter. This section will also include information regarding attachment and/or injunction on the subject property, if any. Lastly, for ship registrations, the final section indicates any information relating to the ship's manager, if appointed and registered by the ship-owner.

## 2.8 Length of Time for Certificate to be Rendered

The issuance of official government documents, including public registries and governmental certificates, is handled through a highly expedited process in Korea. Most of the documents will be issued on the same day of request, including the ship registry certificate for which the users are required to visit registry offices as seen above – for certificates that can be obtained electronically, it will generally take no more than an hour to obtain a certificate. However, if a governmental decision is required for certifying certain matters, such as creating a new ship registry record (eg, registering a new mortgage), it may take up to several days or weeks for a certificate to be rendered.

## 2.9 Costs for Registration of a Ship Mortgage

The relevant costs for registration of a ship mortgage are as follows:

- registration tax: 0.2% of the mortgage amount;
- education tax: 20% of the registration tax; and
- premium for relevant bond: 1% of the mortgage amount.

## 2.10 Containers and Encumbrances

Except for certain vehicles, vessels, construction machinery and aircrafts, etc, registration of rights over movable assets is not recognised by the Korean Civil Act ("KCA"). Therefore, in principle, titles and encumbrances to containers cannot be subject to registration. However, since the enforcement of the Act on Security over Movable Property, Claims, etc. in 2012, mortgage registrations have become available for movable assets such as containers.

Nonetheless, it should be noted that such registrations are only granted to mortgagers that are corporate bodies or persons with a registered trade name, and that other registrations regarding the ownership or lease of a property are still not accepted. The cost for filing a mortgage registration is KRW15,000 per property, under Article 5-4 of the Registration Fee Rules.

## 2.11 Number of Mortgages to Which a Vessel Can Be Subject

Article 787-(3) of the KCC provides for the KCA provisions concerning mortgages to apply mutatis mutandis to ship mortgages. Accordingly, a registered vessel may be subject to several mortgages, very much like any real estate. The order of priority between the mortgages will be determined by the date of registration under Articles 333 and 370 of the KCA.

## 2.12 Consent From Higher Recorded Mortgagees

Under the current legal regime, it is not necessary to obtain the consent or approval of the prior mortgagee when registering a subsequent mortgage.

## 2.13 Pledge Agreements

Unlike mortgages, pledges are not subject to registration under the KCA. Therefore, in order for pledge agreement to take effect, the pledger must deliver the subject of the pledge to the pledgee, to be placed in the pledgee's possession.

## 2.14 Sale of a Vessel Subject to a Duly Recorded Mortgage

The establishment and registration of a property mortgage cannot affect the transfer of its ownership, unless the parties have agreed otherwise. This means that the owner of the mortgaged property may sell the property at any time, without consent from the mortgagee or cancellation of the mortgage agreement and/or its registration. However, despite the transfer in title, the previous mortgage will effectually exist and the mortgagee will be able to assert his or her rights against other third parties, including the new purchaser of the property.

## 2.15 Expiry of a Duly Registered Mortgage

After a registered mortgage expires due to repayment of debt or termination by the parties, etc, the mortgage registration loses effect and thus becomes subject to cancellation. Accordingly, the relevant parties must apply for a cancellation registration at the registration office, but application for cancellation is not a mandatory duty forced upon the parties.

## 3. Capital Markets

### 3.1 Means of Raising Capital Ship Finance

Korea is well known for its high use of loan policy financing. Most of the capital for ship finance comes from government-

run banks such as the Export Import Bank of Korea and the Korea Development Bank, along with loans offered by the Korea Trade Insurance Corporation. Other than public financing, shipping companies also tend to raise funds through private financing, including bank lending, syndicated loans, finance leasing, project financing, equity investment, etc. The Korean Ship Investment Company Act also allows the utilisation of shipping funds, but the activities of shipping funds have decreased since 2014, due to the slow recovery from the financial crises.

### 3.2 Fleet Mortgages and Syndicated Loans

The Korean ship financing market adopted fleet mortgages in ship financing during the 1960s, and they have since been one of the most typically used methods for raising capital in the shipping industry. However, after the collateral value of fleets dropped due to the long-term depression, many financial institutions began to diversify their loan terms and categories for ship finance. Recently, it has been reported that financial institutions take only 50% to 60% of the actual fleet value into account during asset-based loans, and whilst the total percentage of fleet mortgages in the shipping financial structure might have decreased, more parties seem to use a combination of fleet mortgages and project finance.

With respect to syndicated loans, as mentioned above, ship finance led by governmental financial institutions now counts for a significant portion of the Korean ship financing market – it has been reported that governmental financial institutions have greatly increased their total loan amount since 2010, possibly in order to support the shipping industry in recovering from the global financial crisis and subsequent market downfall. Syndicated loans are often used by such public institutions in relation to large-scale loans.

### 3.3 The Flag of the Vessel

Article 60 of the Korean International Private Law (“KIPL”) provides for matters related to a ship's ownership, mortgages and maritime lien to be governed by the law of the country of ship registration – ie, the ship's flag state. Pursuant to such provision, the Korean courts have also found on several occasions that the effect and priority of a ship's maritime lien shall be determined under the ship registration country's law instead of the KCC.

Under the circumstances, it has become a key factor for Korean banks to consider the flag of the vessel when providing loans and settling vessel mortgages with shipping companies. This is because the priority between such vessel mortgages and maritime liens tends to differ according to the regulations set out in the law of the ship's flag state. In some countries, the maritime law provides for the maritime lien to prevail over a bank's mortgage, and in other countries the maritime lien will lack such priority. Naturally, the banks prefer to finance ships that are registered in countries that

provide for a bank's vessel mortgage to be unaffected by and to take priority over the maritime lien.

### 3.4 Securitisation in Ship Finance

After the Ship Investment Company Act came into effect in 2002, the maritime industry was introduced to shipping funds, and the ship finance market's attention was brought to ship investment companies as an additional method for raising capital. Under the traditional ship finance structure, the shipping company would provide the vessel as security for its loan, while making payment of the loan's principals with charterage profits generated from its COA.

Ship investment companies can also carry out banking loans or attract external funds by issuing corporate bonds. Securitisation in ship finance occurs when such loan debts and corporate bonds are transferred to an SPV (Special Purpose Vehicle) by the financial institutions. The SPVs then issue securities based on such bonds as underlying assets. Although it is hard to find public data on the frequency of securitisation used in ship finance, it would be reasonable to assume that the overall usage of securitisation has increased, due to shipping funds gaining more popularity as a means of ship finance.

### 3.5 Ship Finance Centres

While it would be premature currently to call Korea a ship finance centre such as England, Norway, Hong Kong or Singapore, Korean infrastructure and services in the ship financing area are seeing continuous and steady growth.

## 4. Maritime Labour

### 4.1 Labour Laws and Conventions

The major maritime labour law applicable in Korea is the Seafarer's Act, which is the special set of rules that supercedes the general labour statute, the Labour Standards Act. It is generally understood that the relevant provisions of the Labour Standards Act, Ship Personnel Act and Ship Safety Act will be applicable where the Seafarer's Act is silent. Korea is also a member state of the Maritime Labour Convention 2006 (2014 Amendments).

### 4.2 Percentage of Local Seafarers Required to Be Onboard

Korea takes the approach of limiting the number of foreign seafarers rather than fixing a quota for local seafarers to be on board an international sea going vessel. The International Ship Registration Act allows for the Ministry of Oceans and Fisheries to regulate the percentage/number of foreign seafarers to be on board an international seagoing vessel in order to promote the employment of local seafarers (Article 5-(2)). Accordingly, the Ministry of Oceans and Fisheries promulgated the executive order "The Standard and Scope

of Foreign Seafarers' Service on International Ships" (the "Executive Order").

For the purposes of the Executive Order, an "international ship" refers to a merchant ship that has been registered in the international ship register and is engaged in an international voyage. There are three types of international ships:

- "international ship essential to the nation," which transports commodities essential to the national economy and war supplies in times of war or national emergency;
- "designated international ship," designated as per the agreement between the Federation of Korean Seafarers' Unions and the Korea Shipowner's Association; and
- other "general international ships".

The Executive Order differentiates between officers (which includes the officer, chief engineer, engineer, electro-technical officer, chief radio operator, radio operator, chief operating officer and operating officer, the master fisherman, the purser and the ship's doctor) and ratings (the crew who are not officers).

The Executive Order provides that the number of foreign seafarers on board an "international ship essential to the nation" shall not exceed six per vessel, and the rest shall be local seafarers. The maximum number of foreign seafarers serving on board a "designated international ship" is either (i) eight ratings, or (ii) one officer (but for the captain and the chief engineer) and seven ratings. With regard to "general international ships," the captain and the chief engineer shall be local seafarers, but the rest may be foreign seafarers.

However, the Federation of Korean Seafarers' Unions and the Korea Shipowner's Association could reach an agreement to postpone the application of the above Executive Order, if such agreement is supported by rational reason (Article 3-(3) of the Executive Order).

### 4.3 Minimum Wage

When it considers it necessary, the Minister of Oceans and Fisheries may set a minimum wage for seafarers (Article 59 of the Seafarer's Act). Accordingly, the Ministry of Oceans and Fisheries generally proclaim by an executive order the minimum monthly wage for seafarers each year. In the year of 2017 the minimum monthly wage shall be KRW1,760,800 (c. USD1,560).

### 4.4 Daily Working Hours

Article 60-(1) of the Seafarer's Act provides that the standard daily working hours shall be eight hours, and the standard weekly working hours shall be 40 hours. The rule in Article 60-(1) is not without exception, however the ship-owner may order seafarers keeping navigational watch to work overtime not exceeding 16 hours per week (Article 60-(2) of the Seafarer's Act), other seafarers may work up to four

hours of overtime. In cases where there is a mutual agreement between the seafarer and the ship-owner, the weekly working hours can be extended by 16 hours at most.

#### 4.5 Justified Dismissal

Instead of providing an exhaustive list of causes for justified dismissal, the Seafarer's Act states that "a ship-owner shall not terminate a Seafarer's employment nor impose temporary leave, suspension from duty, reduction in wage or any other punishment on a seafarer without just cause" (Article 32-(1)).

In this regard, the Korean court held in a case concerning employees in general that just cause for dismissal includes the fault of the employee that renders the continuation of the employment relationship impossible, or inevitable business reasons (the Supreme Court of Korea, Case No. 91Nu5884 delivered on 22 May 1992). Such judicial interpretation of just cause can be applicable to employed seafarers as well.

To be more specific, the court found just cause for dismissal when the captain committed a clear dereliction of duty to supervise the crew directly or was grossly negligent in his or her duties, resulting in a collision with another vessel (Busan Appellate Court, Case No 97 Na1372 delivered on 25 April 1995).

#### 4.6 Compensation Scale for Occupational Injuries

The scope of compensation for work-related personal injuries against a ship-owner under the Seafarer's Act is as follows (Articles 94, 96, 97 and 98 of the Seafarer's Act):

- medical costs until the seafarer has fully recovered from the injury/illness;
- monthly compensation of 100% of the ordinary wages up to the first four months and 70% thereafter until the seafarer has reached full recovery; and
- lump sum compensation for the seafarer's residual disability after the injury/illness has ended, which would amount to the average on-board wage multiplied by the statutory compensation period.

The term "Ordinary wage" refers to the wages determined to be paid periodically and uniformly within a wage-calculation period, regardless of the number of actual hours provided or the amount received as remuneration for the quality or quantity of the labour.

With regard to the statutory compensation period, the Industrial Accident Compensation Insurance Act provides a scale that differentiates the compensation period applicable to each grade of disability (ranging from 55 days for the lightest disability (14th grade) to 1,474 days for the gravest disability (1st grade)).

If the seafarer fails to make full recovery after two years, the ship-owner may opt out of compensating the seafarer by making a lump sum compensation amounting to the average wages for 1,474 days.

#### 4.7 Social Security

Social security is an obligation to the ship-owners. Korean law imposes compulsory insurance requirements on ship-owners, compelling them to buy insurance policies or join a ship-owners' mutual protection and indemnity club in order to provide full coverage for accident compensation to all seafarers serving on board (Article 106 of the Seafarer's Act). When a ship-owner buys insurance policies or joins ship-owners' mutual protection and indemnity clubs, the insured amount shall be no less than average on-board wages. Also, the ship-owner must name the seafarer as the insured in the policy, so that the seafarer may directly claim the insurance money.

#### 4.8 Maritime Labour Disputes

The process for resolving maritime labour disputes can be initiated by filing an application with the District Seafarer Labour Relations Commission ("the District Commission", Article 34 of the Seafarer's Act) and/or filing a lawsuit directly with the district court.

The District Commission is an administrative agency specialising in resolving labour disputes, established under the Minister of Oceans and Fisheries pursuant to Article 4 of the Seafarer's Act. There are 12 District Commissions stationed in 12 major cities, including Incheon, Busan, Ulsan and Jeju. The District Commission consists of four employee representatives, four employer representatives, and four advocates for the public interest.

A party to the dispute may appeal a decision of the District Commission that affects the legal rights/position of the parties to the National Labour Relations Commission.

The parties may file a suit to the first instance court, requesting cancellation/annulment of the National Labour Relations Commission's decision that affects the legal rights/position of the parties. Afterwards, the judgment can be reviewed by the Appellate Court and then ultimately settled by the Supreme Court.

## 5. Maritime Courts

### 5.1 Number of Courts

No specialised maritime courts have been established in Korea to date but there is growing consensus calling for the establishment of a maritime court, and four bills purporting to establish a maritime court have been proposed and laid before the National Assembly in 2017. It has yet to be determined if such efforts will lead to the actual establishment of

a maritime court in the near future, as there is uncertainty surrounding the scope of authority/location of the maritime court.

## 5.2 Court of Maritime Appeals

Korea does not have a court of maritime appeals; maritime cases go through the same litigation process as general civil/criminal cases, subject to the nature of the case.

The litigation system in Korea is comprised of three instances. The local district court is the court of the first instance. Appeals are lodged to the appellate court, the court of the second instance. Five appellate courts are established in Korea, one for each major city (Seoul, Busan, Daegu, Kwangju and Daejeon). The court of final appeal is the Supreme Court of Korea, located in Seoul.

## 5.3 Maritime Disputes

Maritime disputes in Korea are resolved through general civil dispute procedures, namely litigation in courts, arbitration or mediation, subject to parties' agreements and applicable laws.

It should be noted that maritime judicial panels (three-judge tribunals that exclusively hear maritime cases) have been established in several lower courts (two in Seoul Central District Court, one in Seoul Appellate Court, one in Busan District Court and one in Busan Appellate Court). However, allocation of cases to specific tribunals is strictly subject to the court's discretion, and parties cannot choose or apply for their cases to be heard before such maritime judicial panels – the court will allocate cases to these special tribunals if they find that a certain case is eligible and the tribunal is in a position to hear the case. As for lower courts that do not have maritime judicial panels, maritime cases will be treated as general civil cases subject to their nature, as explained above.

## 5.4 Types of Procedures

### Provisional/Pre-Judgment Attachment Procedure

Prior to commencing the merit proceedings (such as civil litigation in court or arbitration), a creditor may secure a monetary claim against the debtor through provisional attachment/pre-judgment attachment procedures that, in the case of a vessel, will accompany the arrest of a vessel.

### Merit Proceedings

Civil litigation in court (including the simplified procedure for small claims), arbitration and mediation are the procedures used to resolve/confirm the merits of a case.

### Enforcement Procedure

In general, a creditor who (i) holds the security right over assets for its claim (eg, a mortgage or maritime lien over a vessel) or (ii) has confirmed their claim against the debtor who owns the assets in the merit proceeding and obtained the court's judgment or arbitration award enforceable in

Korea may enforce the judgment/award by commencing a judicial auction sale proceeding against such assets in Korea.

## 5.5 Arbitration and Mediation

Arbitration and mediation are the alternative sources of dispute resolution commonly used in Korea.

The parties to a dispute can apply for arbitration under a binding arbitration agreement recognised by the Arbitration Act. In this regard, there is an ongoing collaborative effort for the establishment of a maritime arbitration centre in Korea.

Court mediation is also widely used as an affordable and swift avenue of dispute resolution. The parties may apply for court mediation from the start or in the middle of the trial. The court may also transfer a litigation case to mediation at its own motion or at the parties' application. The mediator will be appointed by the court, and could be a judge, law professor, lawyer or other person with expertise in certain case areas and/or in resolving disputes. If the parties succeed in reaching an agreement through mediation, the agreement is final and enforceable (Article 29 of the Judicial Conciliation of Civil Disputes Act). If the parties fail to reach an agreement and should the mediator decide the case is not fit for mediation, the case will be transferred to litigation. If the parties fail to settle amicably but the mediator deems the case to be eligible for amicable settlement rather than going through litigation, the mediator can make a compulsory recommendation decision in lieu of mediation. The parties can object to such a decision within two weeks of receiving the notice of it, after which the decision will have no effect, and the mediation proceeding will end and be transferred to a litigation proceeding. If all parties do not appeal the recommendation decision by the mediator, such a decision will be final and enforceable (Article 30 of the Judicial Conciliation of Civil Disputes Act).

## 5.6 Proceedings in Rem and in Personam

Korean law does not recognise the concept of in rem; Korean proceedings are only in personam.

On a separate note, maritime liens are protected as a statutory security measure in Korea (the claims that constitute maritime lien are provided in the KCC). Even when the vessel is not owned by the debtor, it is possible for the creditor to exercise the maritime lien over the vessel. The maritime lien continues to exist over the vessel even when the ownership of the vessel is assigned to a third party (Article 785 of the Korean Commercial Code). However, as in rem proceedings are not recognised in Korea, the vessel cannot be named as the respondent/defendant in legal proceedings – only the owner of the vessel will be named as such.

## 5.7 Common Exceptions

Under Korean law, most common exceptions are recognised.

## 5.8 Types of Bonds

### Act Ex officio

Courts can act ex officio and order plaintiffs to post a bond as security for the court costs when the plaintiff does not have an address or principal place of business within Korea, or when it is apparent from the records that the claim is baseless (Article 117 of the Civil Procedure Act). The bond can be posted in cash, as a financial instrument recognised by the court or, if the court has given prior consent, by submitting a court security bond issued by the Seoul Guarantee Insurance Co (Article 122 of the Civil Procedure Act).

### Vessel Arrest

Claimants may obtain pre-judgment security by applying for the arrest of a vessel. Once the application for the arrest of a vessel has been filed with the court, the court will order the arresting party to post counter-security, for which bonds are generally accepted, typically within two or three days. Under general Korean practice, the bond amount is 10% of the claim amount and may be payable in cash or in the form of court security bonds issued by the Seoul Guarantee Insurance Co Ltd (the current range of premium rate for the issuance of court security bonds is set at 0.151% to 0.302% of the bond amount).

### Lift Arrest

The vessel interests may post a bond with the court as security to release the vessel, which would be the most expedient measure to lift the arrest. In Korean practice, the vessel may be released within one or two days after posting the bond. The amount of the bond is the full claim amount preserved by the court's decision to arrest the vessel. The court accepts the cash deposit only, and neither a letter of undertaking issued by P&I clubs/insurers of the vessel nor a bank guarantee qualifies as an acceptable bond.

### Judicial Sales

Unlike the pre-judgment attachment proceeding, the applicant for judicial auction sale of the vessel is not required to post counter-security. This is because the application for judicial sales is based on legally enforceable rights, such as the court's judgment or an arbitral award or security rights such as an established mortgage or maritime lien.

## 5.9 Execution of Foreign Resolutions

### Execution of Foreign Judgments

A court judgment obtained from foreign jurisdictions can be enforced in Korea by filing for an "enforcement order for foreign judgment" at a Korean court.

Article 217 of the Civil Procedure Act provides that a final and conclusive judgment by a foreign court shall be recognised and enforceable in Korea when all of the following requirements are met:

- the foreign court that issued the judgment had jurisdiction over the case, consistent with the principles of international jurisdiction under the laws of Korea and international treaties;
- the defendant who lost the case received the service of complaint and summons in a timely and lawful manner (service by public notice does not qualify as a lawful method), or the defendant nevertheless responded to the lawsuit without being duly served;
- the foreign judgment does not violate the good morals and public policies of Korea; and
- a reciprocal guarantee exists between Korea and the foreign jurisdiction where the judgment was issued.

### Execution of Foreign Arbitral Awards

The Korean Arbitration Act (Article 39) states that the recognition and enforcement of a foreign arbitral award to which the New York Convention applies shall be granted in accordance with the Convention. Korea is a signatory to the New York Convention, but expressed limitations so that the Convention would apply only to foreign arbitral awards that concern commercial matters and are rendered in a country that is a party to the Convention.

As for the recognition and enforcement of foreign arbitral awards to which the New York Convention does not apply, the Korean Arbitration Act (Article 39) states it shall be determined in accordance with Article 217 of the Civil Procedure Act (ie, the set of rules applicable to foreign court judgments discussed above).

## 5.10 The Law of the Flag

Korean law does not recognise the concept of "maritime claims". Instead, the Act on Private International Law provides that issues concerning the maritime lien and the order of priority of security interests on a ship shall be governed by the law of the flag (Article 60).

## 5.11 Priority Status of Ship Mortgages

The order of priority over the proceeds of the judicial sale of a ship is generally as follows:

- cost of the judicial sale (Article 53-(1) of the Civil Execution Act);
- employee or seafarer's wages for the latest three months and accident compensations (Article 38-(2) of the Labour Standards Act);
- maritime liens (Article 777 of the Korean Commercial Code);
- tax claims over the vessel subject to the judicial sale;
- tax claims confirmed before the registration date of the mortgage;
- registered ship mortgages;
- wages of employees (not seafarers) that were not covered above;

- tax claims that were confirmed after the registration date of the mortgage;
- national health insurance premium; and
- general unsecured claims.

Ship mortgages are subordinate to maritime liens in priority (Article 788 of the Korean Commercial Code).

However, the claims secured by maritime liens are listed in the order of priority below (maritime liens arising from later voyages hold priority over maritime liens based on earlier voyages):

- the cost of litigation for common interests of creditors, the taxes and public dues imposed on the ship in respect of the voyage, pilotage dues, towing fees, expenses of preservation and inspection of the ship and its appurtenances at the last port;
- seafarers' claim arising from an employment contract;
- salvage charge due to rescue operations at sea and claims for a share in general average; and
- claims for damages caused by ship collisions and other navigation accidents, damage to navigation facilities, port facilities and routes, and damage concerning the personal injury or death of a crew member or passenger.

It should be noted that those who have incurred expenses in order to maintain/repair or ameliorate the ship will have the right of retention over the ship as security for their reimbursement claims. Such claimants will hold de facto priority over maritime liens or ship mortgages, as they will be able to occupy the ship until their claims have been satisfied.

Between ship mortgages, the mortgage whose registration date is earlier shall take priority over any mortgage registered at a later date. Similarly, if there is a registered lease that predates a registered mortgage, lease will take priority over the mortgage.

## 5.12 Limitations of Liability

Under Korean law, the following relevant claims are subject to global limitation:

### Claims Against Ship-owners

Claims against ship-owners that are subject to limitations of liability under the Korean Commercial Code (Article 769) are as follows:

- claims for loss of life, personal injury, or loss of/damages to goods other than the vessel itself, arising directly from the vessel or its navigation;
- claims for late delivery of cargo, passengers or baggage;
- other claims for damages resulting from infringement of a third party's non-contractual right (eg, claims for infringement

of fishing rights caused by an oil leak from the vessel); and

- claims for the price of prevention/mitigation measures against the cause of the above claims, or the secondary loss incurred by such prevention/mitigation measures.

The above limitations of liability for ship-owners extend to claims against charterers and the manager or operator of the vessel, and their partners, with unlimited liability. The captain, crewman, pilot and other ship-owners, or the employee or agent of the above-mentioned charterer, manager or operator of the vessel who is held directly/jointly liable for their actions regarding all of the above claims against the ship-owners, charterers, manager and operator of the vessel may invoke the same limitations of liability (Article 774-(1) of the Korean Commercial Code).

### Claims Against Salvors

Salvors are also entitled to seek limitation of liability regarding claims for loss of life, personal injury, loss of/damage to goods, damages resulting from the infringement of a third party's non-contractual right, the price of prevention/mitigation measures against the causes of such, or the secondary loss incurred by such prevention/mitigation measures (Article 775 of the Korean Commercial Code).

### Claims Against the Owner of Oil Tankers

The Compensation for Oil Pollution Damage Guarantee Act limits the claim for damages arising from oil pollution against the owner of the oil tanker that caused the pollution (Article 5).

On the other hand, with regard to the package limitation of the carrier, Article 797-(1) of the Korean Commercial Code provides as follows:

“The liability of a carrier for compensation for damage ... may be limited to the extent of the larger amount between the amount of 666 and 67/100 units of account per package or per shipment unit of the relevant cargo and the amount of two units of account per kilogram, provided that the same shall not apply in cases where the damage in relation to the cargo was caused due to the carrier's wilful misconduct or other reckless act or omission while recognising the concern about the occurrence of the damage.”

## 5.13 Exemptions from Limitation

Article 773 of the Korean Commercial Code lists the following five exemptions from limitations of liability for ship-owners:

- claims against the ship-owner held by the captain, crewman or other employees whose duties are connected with the ship, and their inheritors, dependants or other persons entitled to make such claims;

- claims for salvage, or claims for contribution in general average;
- claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol thereto;
- claims against the captain, the ship-owner or other persons who caused the vessel to sink or caused other marine accidents (such as wrecking, grounding, abandonment) for expenses to salvage, remove, destroy or render harmless such vessel and the cargo/goods on board; and
- claims for nuclear damages.

Also, global limitations and package limitations do not apply where the damage resulted from an act or omission of the ship-owner/carrier done with the intent to cause damage or through recklessness with awareness of the risks of causing damage (Articles 769 and 797 of the Korean Commercial Code).

## 5.14 Calculation of Limits of Liability

### Global Limitation

The amount/level of ship-owners' global limitation (Article 770 of the Korean Commercial Code) matches the 1976 LLMC levels, with the following exceptions:

- in respect of claims for loss of life or personal injury to passengers of a ship, the limit of liability of the ship-owner thereof shall be an amount of 175,000 units of account multiplied by the number of passengers the ship is authorised to carry according to the ship's certificate;
- with regard to the claims for loss of life or personal injury to non-passengers of a ship with a tonnage not exceeding 300 tons, the limit of liability of the ship-owner shall be 167,000 units of account; and
- with regard to all other claims (loss of/damage to property claims) of a ship with a tonnage not exceeding 300 tonnes, the limit of liability of the ship-owner shall be 83,000 units of account.

### Package Limitation

As reviewed above, the amount of package limitation of the carrier's liability for any loss or damage to the goods (Article 797 of the Korean Commercial Code) shall not exceed either 666.67 units of account per package or unit, or two units of account per kilogram of gross weight of the goods lost or damaged, whichever is higher.

## 5.15 Exceptional Actions for Ending a Maritime Claim

There are exceptional actions for ending a maritime claim in Korea. When a vessel has been arrested, the vessel interests may initiate a Procedure for Limiting the Liability of Ship-owners (the "liability limitation proceeding") in Korea if the amount claimed exceeds the applicable limitation sum. The

vessel may be released upon commencement of the liability limitation proceeding.

Ship-owners must file an application to the court in order to initiate the liability limitation proceeding, separate from merit proceedings. The Act on the Procedure for Limiting the Liability of Ship-owners, etc, provides that such an application shall be made within one year of receiving the written claim specifying the amount exceeding the limit of liability (Article 776-(1) of the Korean Commercial Code). If the court views the application for the liability limitation proceeding to be sound, it shall order the ship-owner to post a bond amounting to the ship-owner's limit of liability with the accrued interest (Article 11). The bond will constitute an independent fund from which the creditors will be able to satisfy their claims.

From the moment the liability limitation proceeding has commenced, the ship-owner's assets not included in the fund will be shielded from further claims, provisional attachments and other actions from the creditors (Article 27).

## 6. Legislation on Corporations and Tax System

### 6.1 New Corporate or Tax Legislation

Article 104-10 of the Restriction of Special Taxation Act was revised on 20 December 2016 to allow shipping corporations to opt out of the Tonnage Taxation System until the business year including 31 December 2017. The purpose of the amendment was to provide flexibility as support for the corporate restructuring of shipping corporations.

On 28 December 2016, the Korea Accounting Institute revealed/proposed amendments to K-IFRS (Korean-International Financial Reporting Standards), which is the set of accounting rules applicable to listed corporations. The proposed amendments aim to reflect the revisions to the International Financial Reporting Standard 16 on Leases ("IFRS 16") that will be effective for annual periods beginning on or after 1 January 2019.

The previous accounting model for leases required lessees to classify their leases as either finance leases or operating leases, and to account for those two types of leases differently. The previous model did not require lessees to recognise assets and liabilities arising from operating leases. The new IFRS 16 model requires a lessee to recognise the assets and liabilities for all leases (regardless of financial leases or operating leases) in its financial statements, with a term of more than 12 months unless the underlying asset is of low value. The K-IFRS is expected to be revised accordingly in the near future.

Such change could have an adverse impact on the debt ratio of shipping corporations, as many long-term COAs (contract of affreightments) had been classified as operating leases, and such lease liabilities must be represented in the financial statements when the revised rule takes effect.

Bearer shares are not recognised under the Korean corporate legal system; only nominative shares are allowed. The revised Korean Commercial Code entered into effect on 20 May 2014 and deleted the provisions (Articles 357 and 358) allowing for the issuance of bearer shares. The removal of such articles was motivated by the fact that bearer shares were seldom issued in practice, and there was a concern that bearer shares could be used as a means of evading capital gains tax.

The Korean Debtor Rehabilitation and Bankruptcy Act (“DRBA”) was established and entered into effect in 2006, with a Chapter on Cross-Border Insolvency (“Chapter 5”). Article 640 of the DRBA confers authority on the trustee of the domestic insolvency proceedings to initiate insolvency proceedings in foreign jurisdictions in a manner consistent with the laws of such foreign jurisdiction. The purpose of this amendment was to manage/preserve the insolvent debtor’s assets situated outside of Korea.

There is no statutory time frame for the liquidation of assets outside Korea. As the liquidation of assets in a foreign jurisdiction is conducted pursuant to the laws of that foreign jurisdiction, the time requirement will be governed by the laws of the country where the assets can be liquidated.

A recent amendment was made to Chapter 5 to reflect the establishment of the Seoul Rehabilitation Court in March 2017, which is the first specialised court for rehabilitation and bankruptcy cases. Article 630 of the DRBA now confers

exclusive jurisdiction upon the Seoul Rehabilitation Court to grant decisions recognising and/or supporting foreign insolvency procedures within Korea (before the amendment, the exclusive jurisdiction was with the Seoul Central District Court).

## 6.2 Universal or Territorial Tax System

Korea has a mixed tax system, with co-existing aspects of the universal tax system and territorial tax system. Residents and domestic corporations are taxed on all income, regardless of whether it is from a foreign or domestic source. On the other hand, taxable income is restricted to domestic source income in the case of non-residents and foreign corporations (Article 3 of the Income Tax Act and Article 3 of the Corporate Tax Act), showing the characteristics of the territorial tax system.

## 6.3 Procedure Once Shipping Company Ceases to Exist

When a ship-owning company is dissolved, its legal capacity becomes limited and it can only hold rights and obligations for the purpose of the liquidation process. In other words, the ship-owning company holds the legal capacity for settling pending business, but not for initiating actions for a new business. The Supreme Court of Korea has repeatedly held that a corporation that has been dissolved and liquidated can still exist as a legal entity within the boundary of resolving such pending matters, if it is necessary to settle pending business (Supreme Court of Korea, Case No 94Da7607 delivered on 27 May 1994 et al). Therefore, the ship-owning company that ceases to exist may still exercise rights including but not limited to filing suits, transferring assets and dividing capital stocks, if such actions serve the purpose of resolving pending matters. There is no prescribed time-bar for such activities.

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