# Kluwer Arbitration Blog

## A Tale of Two Maritime Hubs: The Rise of Regional Maritime Arbitration Centers in Asia

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This post examines the distinctive features and positive aspects of the maritime arbitration infrastructure of Singapore and South Korea while also exploring areas in which there is room for improvement in order to make these regional centers attractive to a wider international audience.[1)]

**Singapore**

Singapore has been an active player in the maritime arbitration sphere for at least a decade. A key node in the maritime arbitration infrastructure in Singapore is the Singapore Chamber of Maritime Arbitration ("SCMA"). The SCMA was originally established in November 2004 under the management of the Singapore International Arbitration Centre ("SIAC") but was reconstituted in May 2009 as an independent body following industry feedback.[2)]

Generally, maritime and maritime-related disputes can and are referred to both the SCMA and the SIAC, although the SCMA is designed to specifically cater to the maritime community, and its rules and approaches generally reflect the prevailing practices in the maritime community.

The SCMA adopts a self-administered model of institutional arbitration, similar to that of the London Maritime Arbitrators Association ("LMAA"). Parties only pay costs to the SCMA when they require the SCMA to play an active role, e.g. appointment of an arbitrator, and no filing fees are payable for the commencement of an arbitration under the SCMA Rules (see Rule 6 of the SCMA Rules). An appointment fee is payable only to the arbitrator, whether appointed by parties or by the Chairman of the SCMA.[3)] As such, providing for arbitration under the SCMA Rules can be commercially attractive to the maritime community, especially as maritime contracts often have very short periods within which to bring claims or proceedings and parties often commence proceedings to protect time. These disputes may later be settled, so there is an incentive to keep the costs incurred in commencing protective proceedings low.

A small claims procedure is also provided for under the SCMA Rules (see Rule 46 of the SCMA Rules). The small claims procedure involves an expedited and simplified arbitration procedure. The small claims procedure is a typical feature of maritime arbitration practice and is routinely

used by the maritime community to resolve simpler disputes (e.g. disputes involving very modest claim amounts or simple points of law). Presently, the small claims procedure under the SCMA Rules would apply if the aggregate amount of the claim and counterclaim in dispute is less than US$150,000 excluding interest and costs.[4] That said, the SCMA Rules allow parties the flexibility to agree for the small claims procedure to apply to claims exceeding US$150,000[5] or even to exclude the application of the small claims procedure completely.[6]

Further, the SCMA Rules contain terms which are specifically tailored to particular segments of the maritime community, notably the Singapore Bunker Claims Procedure ("SBC Terms") under Rule 48 of the SCMA Rules and the SCMA Expedited Arbitral Determination of Collision Claims ("SEADOCC") under Rule 47 of the SCMA Rules.

In addition, the SCMA panel of arbitrators consists of specialists in one or more maritime disciplines with at least 10 years' experience in the arbitrator's field of specialty.[7] This is particularly useful as users can be assured that the arbitrator appointed by the Chairman of SCMA upon a party's request from the SCMA's panel of arbitrators has the requisite experience to determine the disputes.

The SCMA's commitment to being an industry-friendly arbitration institution is underscored by the public consultation it undertook on possible amendments to the SCMA Rules 2015 (3rd Ed). The proposed amendments appear to be aimed at making the SCMA Rules more user-friendly to the maritime community by clarifying the ambit or application of certain rules, as well as certain structure changes to better cater to the needs of the maritime community.[8]

**Korea**

In South Korea, a peninsular country with a world-famous shipping industry that has been thriving as of late, the maritime arbitration infrastructure has shown promising signs of growth. The Korean Commercial Arbitration Board ("KCAB"), founded in 1966, is the only institution in Korea that is statutorily empowered to deal with cross-border disputes. To meet Korea's growing demand for international commercial dispute services, KCAB INTERNATIONAL was established on 20 April 2018 as an independent division of the KCAB. Maritime disputes make up approximately 5% of KCAB INTERNATIONAL's overall caseload.[9]

The year 2018 was also an important year in the promotion of maritime arbitration in Korea as the Asia-Pacific Maritime Arbitration Center ("APMAC") was established under the umbrella of the KCAB, not as a new institution but as a maritime-focused arbitration center. It is based in Korea's biggest port and second-largest city, Busan.[10] Notably, the Seoul Maritime Arbitrators' Association ("SMAA") was also established in 2018, to administer *ad hoc* arbitration proceedings with an exclusive focus on maritime disputes.

The APMAC has its own set of rules, the Maritime Arbitration Rules of the Asia-Pacific Maritime Arbitration Center ("APMAC Rules").[11] Although APMAC's focus is on maritime disputes, the APMAC Rules lack any maritime-specific provisions and largely mirror the provisions of the

KCAB International Arbitration Rules, which can be used for any type of commercial arbitration. Indeed, the APMAC Rules are primarily a simplified version of the KCAB International Arbitration Rules, with the main difference being that they impose tighter timelines on the submissions of briefs (30-day periods, unless the Tribunal decides otherwise)[12] and on the rendering of awards (30 days after a hearing, unless there are special circumstances).[13] To enhance the specialty nature of the APMAC Rules (and perhaps make them more likely to be adopted for use in relation to maritime disputes), APMAC (and KCAB) could consider adding provisions similar to Rule 47 of the SCMA Rules ("SCMA Expedited Arbitral Determination of Collision Claims (SEADOCC)") and Rule 48 ("Singapore Bunker Claims Procedure (SBC Terms)") for the sale or supply of bunkers, or other provisions that relate to common types of disputes that arise between international and Korean companies in Korea's bustling shipyards.

At least one provision of the APMAC Rules highlights the drafters' intention to make them more internationally oriented: Article 25 expressly provides that, even if the official language of arbitration is Korean, the parties are not required to submit Korean language translations of documents in English. While this is a move in the right direction, the APMAC Rules could go even further by stating (like the SCMA Rules) that, unless otherwise agreed by the parties and the Tribunal, the language of an arbitration involving an international (non-Korean) party shall be English.

Up to this point, there are relatively few resources in English on the SMAA, and it is hoped that this "new kid on the block" will find ways to gradually increase its international stature. The organization would reap benefits by adding more substantive content to its English website and by adopting "Terms and Procedures" in English, perhaps modeled after the LMAA Terms and Procedures 2021 but taking into account any unique features of the Korean Arbitration Act, Korean law and other relevant factors. It is also hoped that opportunities for knowledge-sharing between the Korean maritime arbitration entities and other countries' maritime arbitration entities will proliferate in the future. Given its connection with APMAC, KCAB INTERNATIONAL has an important role to play in guiding such efforts.

## Conclusion

In the two Asian maritime hubs that have been featured in this article, progress has certainly been made to attract an international base of users. That said, for the institutional and *ad hoc* maritime arbitration infrastructure in these hubs to reach their full potential, certain improvements will need to be made.

In Singapore, the SCMA's adherence to best international practices and its efforts to introduce innovative rules demonstrate the institution's commitment to users' needs. It is hoped that further improvements will be made to the SCMA Rules through the recent consultation process.

Whilst the SCMA, as a relatively early entrant to the international maritime arbitration scene in Asia, may have some lead over other later entrants, the SCMA could consider whether and how to distinguish itself from other regional maritime arbitration centers. This could include promulgating specific rules that cater to more specific segments of the maritime industry or types of maritime disputes (similar to the SBC Terms and SEADOCC), which may increase the efficiency of SCMA-administered arbitrations and make them more user-friendly to the commercial users.

Meanwhile, South Korea has taken steps toward becoming an accessible and internationally friendly regional maritime arbitration hub, but more thorough and diligent efforts – looking outward at other model jurisdictions for maritime arbitration – are needed for it achieve global prominence in the maritime arbitration arena. In addition, APMAC (and its parent organization, KCAB) would benefit by making efforts to attract users from civil law countries – whether in Europe, East Asia, Southeast Asia or elsewhere – through the incorporation of elements of the civil procedure and practice of civil law jurisdictions. Whilst SCMA and other market-leading maritime arbitration bodies such as the Hong Kong Maritime Arbitration Group are firmly rooted in the common law tradition, Korea's maritime arbitration center could distinguish itself as the civil law maritime arbitration hub of Asia.

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References

**?1** Inni In Young Choi of Shin & Kim also contributed to this post. The authors thank James Michael Turner QC of Quadrant Chambers for his helpful comments on this post.

**?2** SCMA website “About Us”: About Us

**?3** SCMA website “Fees”: Resources

**?4** Rule 46.1 of the SCMA Rules 2015

**?5** Rule 46.2 of the SCMA Rules 2015

**?6** Rule 46.3 of the SCMA Rules 2015

**?7** SCMA website Arbitrator Application

**?8** Consultation Paper: Possible amendments to the SCMA Rules 2015 (3rd Ed) by SCMA

**?9** KCAB INTERNATIONAL 2019 Annual Report.

**?10** The KCAB is headquartered in Seoul, while the APMAC is headquartered in Busan.

**?11** The Maritime Arbitration Rules of the Asia-Pacific Maritime Arbitration Center.

**?12** The Maritime Arbitration Rules of the Asia-Pacific Maritime Arbitration Center, Art. 20.

**?13** The Maritime Arbitration Rules of the Asia-Pacific Maritime Arbitration Center, Art. 28(5).