

Korea in shipping and shipping in Korea



Shang Doe Shim
Claims Director
+65 6506 2884
shangdoe.shim@ctplc.com

Korea: the facts

- World's principal shipbuilding country
- Owns 4.62% of world tonnage – 80m dwt
- Korean membership accounts for 4% of The Standard Club's tonnage.

The shipping and shipbuilding industries in the Republic of Korea (hereafter referred to as Korea) have been developing rapidly since the 1960s. Today, Korea is the principal shipbuilding country in the world and owns approximately 80m dwt (4.62% of world tonnage), making it the world's sixth-largest shipowning country. This mirrors the development of the Korean economy, which is now the world's eleventh largest.

Civil law system

As a civil law country, Korea has been updating its maritime laws to correspond with the developments of international conventions and international practices. However, legal practices in Korea under the civil law system are not always in line with international practices, which are usually influenced by common law doctrines.

For example, whilst in principle there is no concept of *in rem* under Korean law, it was one of the most controversial issues in the maritime law society in Korea for a long time whether a time charter should be considered as a type of demise charter in legal terms. The result of this decision could determine whether a time charterer is liable for the operations of a time-chartered ship, eg collisions, against a third party.

This issue seems to have been settled so that the legal effect under Korean law is the same as under English law, ie that a time-charterer is not responsible for navigational matters against a third party. However, the logic behind this conclusion under Korean law is based on various complicated theories which are beyond the scope of this article.

International maritime conventions

Korea is not a party to any cargo conventions such as the Hague Rules, the Hague-Visby Rules or the Rotterdam Rules. However, its

Commercial Act (Part V – Marine Commerce) is enacted based on the Hague-Visby Rules, including provisions for the limits of liability of carriers (666.67 SDR per package or 2 SDR per kilogram) and the exemptions of liability of carriers for errors in navigation, etc.

Likewise, whilst Korea is not a party to the 1976 Limitation Convention¹ or the 1996 Limitation Protocol², its Commercial Act introduced a right to limit liability on similar terms pursuant to the 1976 Limitation Convention except for personal injuries to passengers, for which the limit was increased in line with the 1996 Limitation Protocol.

Korea is, however, a party to the 1992 CLC³, the 1992 Fund Convention⁴ and the 2003 Supplementary Fund Protocol⁵. Korea ratified the 2001 Bunker Convention⁶ in 2009 but has not, at the time of writing, ratified the 2007 Nairobi Convention⁷.

Timebars

Pursuant to Korean law, a general five-year timebar applies to claims arising out of commercial activities (eg breaches of commercial contracts). However, the one-year timebar applies in respect of cargo claims against a carrier, claims founded on maritime lien or in general average. A two-year timebar applies to claims arising out of time or voyage charters, salvage and collisions.

- 1 Convention on Limitation of Liability for Maritime Claims 1976
- 2 Protocol of 1996 to amend the 1976 Limitation Convention
- 3 International Convention on Civil Liability for Oil Pollution Damage 1992
- 4 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992
- 5 Protocol to the 1992 Fund Convention (Supplementary Fund Protocol) 2003
- 6 International Convention on Civil Liability for Bunker Oil Pollution Damage 2001
- 7 Nairobi International Convention on the Removal of Wrecks 2014

Maritime lien

Article 777 of the Commercial Act provides that the following claims give rise to a maritime lien against a ship:

- The costs of litigation for common interests of creditors, all taxes imposed on the ship concerning the voyage, pilotage dues, towing fees, maintenance charges and inspection charges of the ship and its appurtenances after final entry into a port.
- Claims out of an employment contract for a crewmember or any other employee.
- Salvage charges arising from rescue operations at sea and claims in general average.
- Claims for loss or damage arising from collision of the ship and other navigation accidents, loss of and damage to navigation facilities, port facilities and routes, and loss of life or injury to crew or passenger.

Interestingly, however, whether or not there comes into existence a legally recognised maritime lien in Korea against a foreign-registered ship is not to be determined by reference to Article 777 of the Commercial Act, but instead by reference to the law of the ship's flag.⁸ As a result of this peculiarity, Article 777 only applies to ships registered in Korea.

8 Article 60 Korean Act on Private International Law

Compensation under the Seafarers Act

Compensation for personal injury against a shipowner pursuant to the Seafarers Act may be broadly divided into two categories: work-related and non work-related injuries. Compensation for work-related injuries is greater.

- Scope of compensation in respect of work-related injury/illness:
 - Medical costs until the seafarer has recovered.
 - 100% of ordinary wages for up to four months and 70% thereafter until the seafarer has recovered.
 - Compensation in respect of the seafarer's permanent disability post-recovery.

A shipowner may, however, be released from these obligations where the seafarer fails to recover after two years and the shipowner opts to make compensation in a lump sum equivalent to average wages of 1,474 days.

- Scope of compensation in respect of non work-related injury/illness:
 - Medical costs for up to three months.
 - 70% of ordinary wages for up to three months.

As regards compensation following a work-related death, the amount of compensation is the equivalent of 1,300 days' average wages, whereas compensation in respect of non work-related death is capped at 1,000 days' average wages.

Arrest and security

Although Korea is not a party to any arrest convention, a claimant may obtain pre-judgment security by arresting the ship in appropriate types of claims. The arresting party would have to also provide counter security amounting to 10% of the amount of its claim in cash or by way of a surety bond or as ordered by the court. No

counter security is required where the arrest is in respect of the enforcement of a judgment or a maritime lien.

In order to release a vessel from arrest, the shipowner must pay into court a cash security equivalent to the amount claimed. Neither a P&I club's letter of undertaking nor a bank guarantee is acceptable by the court.

Establishment of maritime divisions in courts

In the past, there were concerns about the potential risk of adverse and/or delayed decisions by judges who might not be familiar with maritime disputes. To dispel such concerns, on 22 February 2016, the Seoul Central District, Busan District and the Seoul High Courts established maritime divisions within the respective courts, which are presided by specialist maritime judges who are capable of dispensing professional and speedy service to resolve maritime disputes. Whether the maritime divisions will be elevated to the level of a fully fledged maritime court remains to be seen.

Conclusion

Maritime law in Korea has kept up with the developments in domestic and international shipping environments. Korea has adopted most of the major international conventions without becoming a party to them, whilst concurrently developing some distinctive features in its domestic shipping legislation. The choice of Korean law and jurisdiction in shipping contracts may also increase in popularity over time. Where our members are confronted with unfamiliar provisions in Korean law in such contracts, we as a club are able to recommend appropriate Korean shipping lawyers to clarify the position and to protect our members' interests.