MORE RECENT EUROPEAN AND SOUTH AMERICA TRENDS RELATED WITH INTERNATIONAL ARBITRATION

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A. Initial remarks

1. Thanking all the entities that were instrumental for this kind invitation.

2. My experience with arbitration in Korea was very positive.

3. I am a member of the ICC International Court of Arbitration, but I am speaking only as an international arbitrator, and nothing that I will state may be construed as an opinion of the ICC.

B. Introduction

4. Arbitration is booming all over the world:

a) more international trade

b) more information about arbitration advantage

c) increased pool of qualified and experimented arbitrators

d) new national arbitration laws more friendly (in the last 15 years England, Scotland, Switzerland, Germany, Spain, Ireland, Brasil, Peru, etc)

e) increased lack of efficiency and specialization of the Judiciary if compared with the needs of trade.

f) Openness of Governments to admit arbitration when signiing investment international contracts or opening PPP's tenders, albeit now things are changing in some parts of Latin America

5. **Europe and Latin America** (and tomorrow Africa) are parts of the world where it is spreading for a number of reasons:

6. Very important for **Korean companies** to consider arbitration when abroad.

7. Choice of different and **highly qualified international institutions**, able to administer arbitrations in every corner of the world and independent enough to assure the inexistence of bias, for instance when selecting arbitrators.

8. **The case for ICC** when parries wish to have one institution with its seat out of the parties countries**:** the largest, administering more than 1500 cases per year, fully international, with active National Committees that may be called upon to select arbitrators

C. Some major trends

1. **The interaction with national courts** is being more complex. The conflicts of competence (West Tanker and the Green Paper in Europe and some constitutional amendments in some Latin America countries). The anti-suit and anti-arbitration injunctions. The estoppel doctrine. The review of awards by the courts

2. The spread number and sophistication of **interim measures** and the increasing acceptance of Arbitral Tribunal power for deciding them.

3. **Public Policy** is paying a strong role, namely with competition matters in Europe and internal public policy in a number of Latin America countries.

4. Admissibility of **recognition of awards for exequatur** in cases where the award has been set aside by the courts of the seat of arbitration

5. The renaissance of **Calvo Doctrine** (the Constitutional Court of Ecuador.

6. **Bankruptcy** and arbitration. The access of Justice limitations to arbitration

7. **Impartiality and independence of arbitrators**: what was considered normal some years ago is no longer admissible.

8. **Multyparty arbitrations:** increasing in number

9. **Wiaver of rights and imposing local arbitration** in South America. Not always a problems (avoidance of exequatur, highly qualified legal profession, *favor arbitratis* of the Judiciary .

10. **New fields of arbitrability**: Intelectual Property, Derivatives, Labor, Family matters – sharia and jewish arbitration

11. **New trends in seeking evidence**: discovery, e-documents, expert witnesses. The Claus Sachs protocol.

12. **Third parties** to be bound by awards and also acceptance of third party intervention (alter ego, group of companies, negotiation of contracts by the mother company, etc).