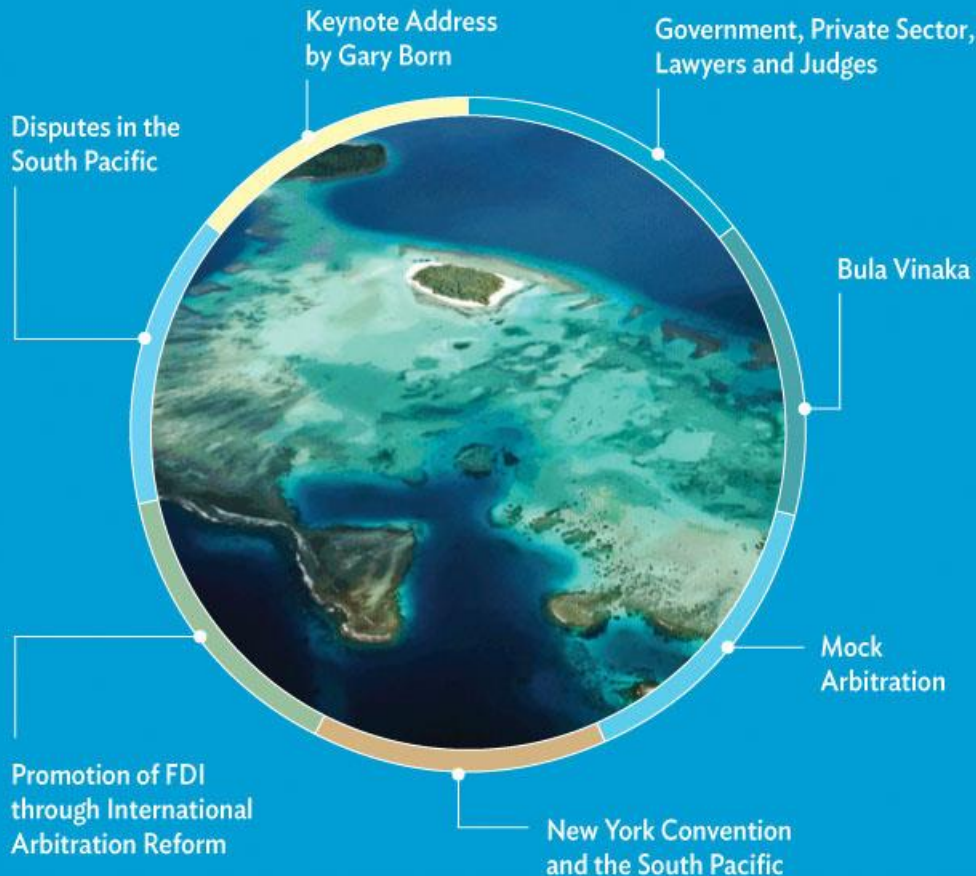


REGIONAL INTERNATIONAL ARBITRATION CONFERENCE

DAWN OF INTERNATIONAL ARBITRATION IN THE SOUTH PACIFIC

12 & 13 February 2018

Westin Denarau Island, Nadi, Fiji



ANATOMY OF INTERNATIONAL ARBITRATION

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E. Y. Park

Co-Head, International Arbitration & Litigation Group

Kim & Chang

12 February 2018



United Nations
UNCITRAL

What is International Arbitration?

Traditional Method of Dispute Resolution

Local or foreign court which
may result in an advantage to
one party



Neutral forum
required

International Arbitration

Arbitration is a parties'
agreement to finally resolve
disputes outside of the court



Neutral forum
agreed

Set Menu

Traditional Court Proceedings

Judges are fixed

Court procedures are fixed

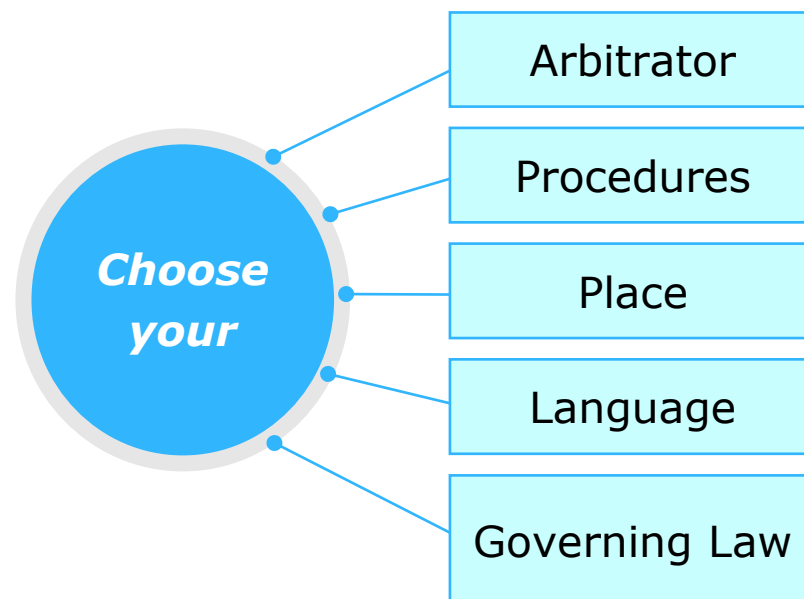
Place of court is fixed

Language is fixed

Procedural law is fixed

A La Carte

Arbitration



State v State

State v Non-State Actor

between Private Parties

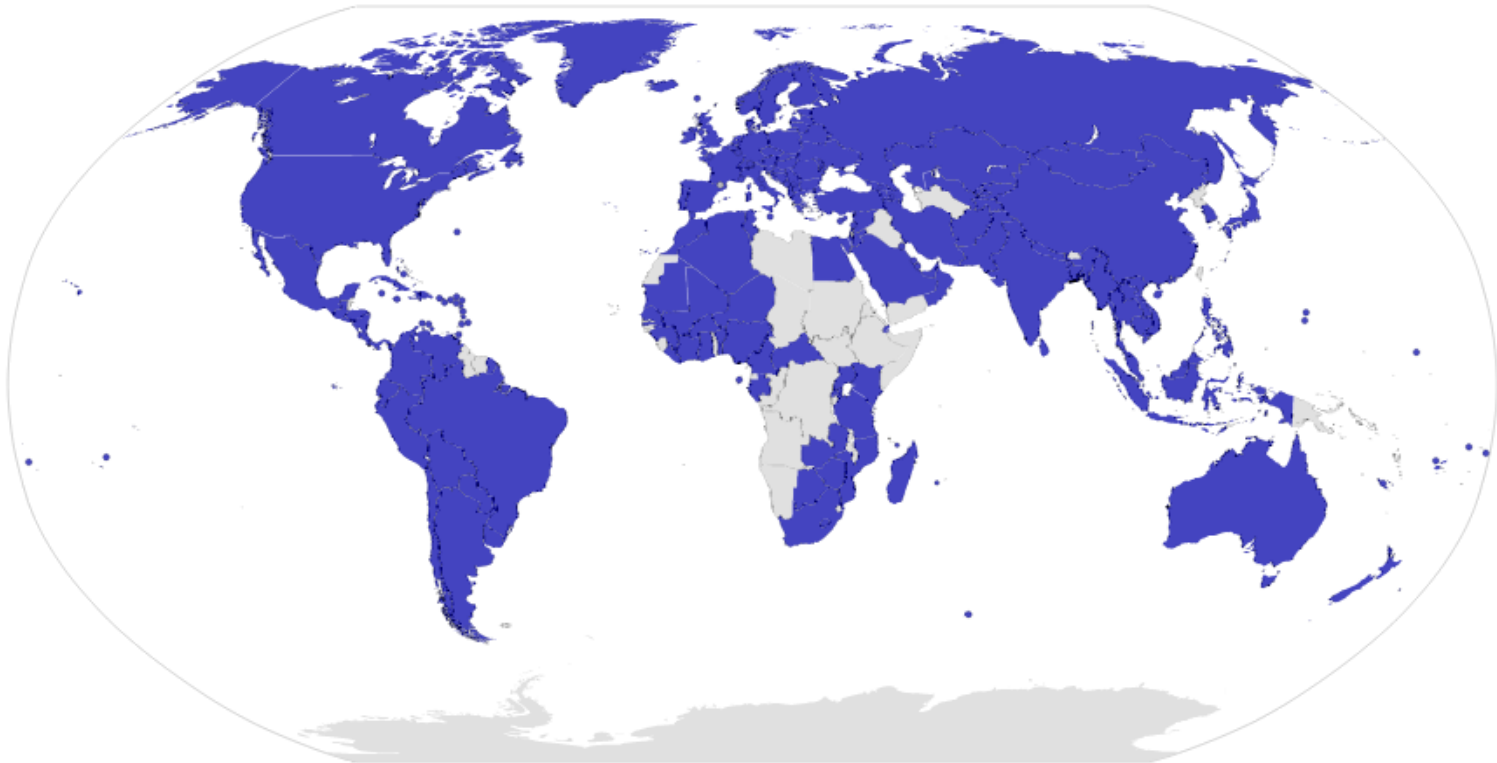
Commercial Arbitration: ICC, LCIA, SIAC, HKIAC, KCAB

Investment Arbitration: ICSID, PCA, UNCITRAL

Sports Arbitration: CAS

Arbitration on Boundary Disputes: UNCLOS

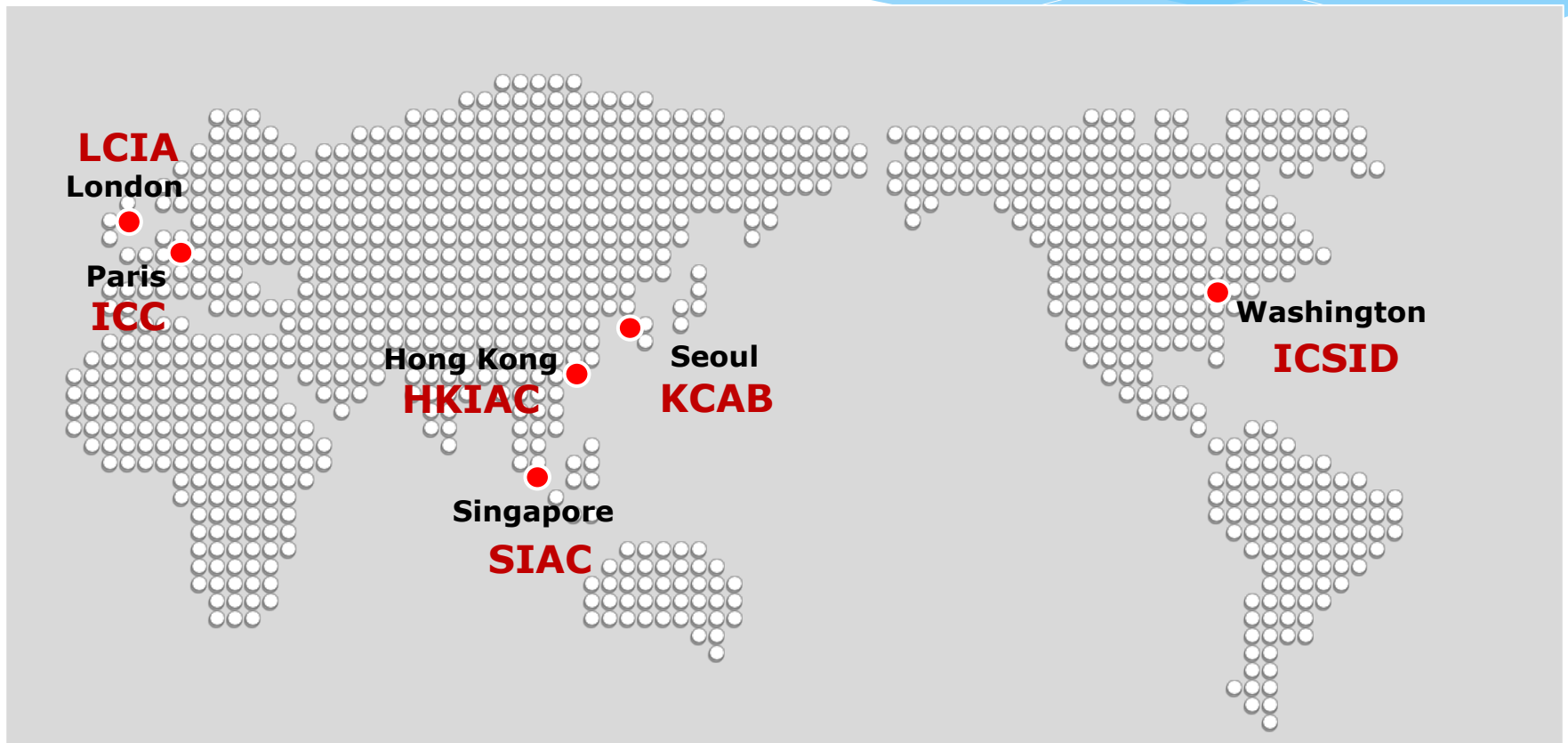
Enforcement - Parties to the New York Convention



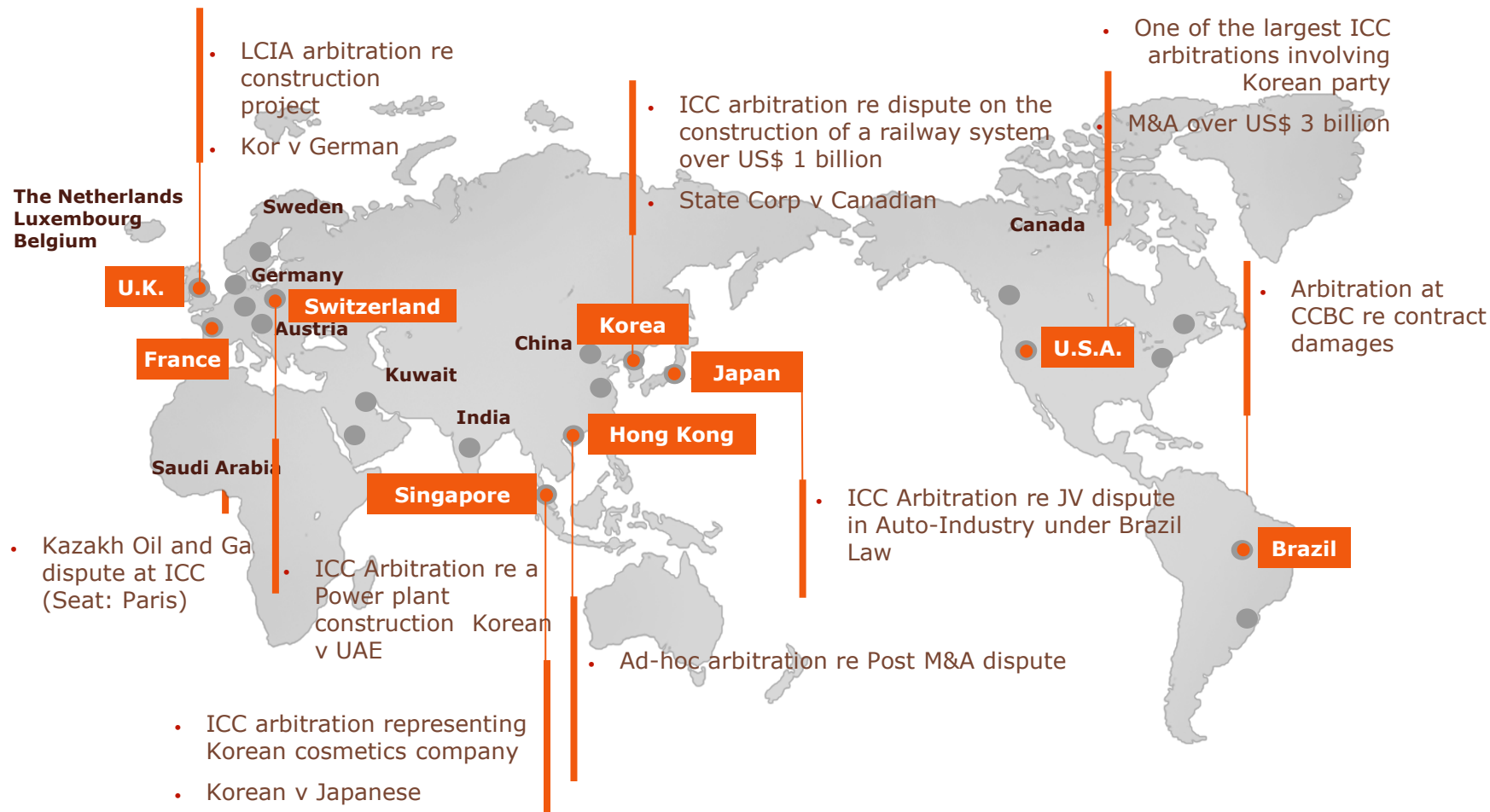
■ Convention in Force
Parties: 155

UNCITRAL Model Law on International Commercial Arbitration: A-P Region





Case Examples



Seat of Arbitration - General Rule

► The seat of arbitration should be

A party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

A country whose laws are supportive of arbitration

A country whose courts have a track record of issuing unbiased decisions that are supportive of the arbitral process



Seat of Arbitration - Issues to be Considered

Local courts may intervene in arbitration proceedings

Lex Arbitri

Local courts have jurisdiction to set aside arbitral awards

Neutrality

Facilities

Proximity of witnesses and evidence

Familiarity with language and culture

Arbitrators

1

Probably the single most important decision in a case

2

Needs to be objective, competent and unbiased

- IBA Guidelines on Conflict of Interests

3

Party appointed arbitrators

- Neutrality
- Independence
- Impartiality

4

Once constituted, Arbitral Tribunal controls most aspects of the arbitration

Arbitrators - Three Arbitrators v. Sole Arbitrator

Sole Arbitrator

- may be less expensive
- may take less time to deliberate the case
- may be more appropriate for smaller cases
- mostly appointed by a third party appointing authority

VS

Three Arbitrators

- relatively more reliable for complex issues of fact and law
- may ensure better quality of proceedings
- reduces risk of irrational or unfair results
- parties appoint the arbitrators

- Neutrality and impartiality
- General knowledge v. expertise on issues in the case
- Additional Factors to consider in selection of chairman
 - Place of arbitration
 - Common Law or Civil Law background
 - Capability of understanding applicable law
 - Approach to rules of evidence
 - Scope of discovery
 - Strictness on procedural flexibility
 - Experience in international arbitration
 - Reputation in international arbitration circles
 - Language skills and cultural background



Procedural Time Table and Submission Method

- I. Request for Arbitration (C) & Answer (R)
- II. Constitution of Tribunal and Case Management Conference
- III. Submissions: legal briefs supported with witness statements and evidentiary documents
 - C's Opening Memorial (Statement of Claim)
 - R's Opening Memorial (Statement of Defense)
 - C's Second Submission (Statement of Reply)
 - R's Second Submission (Statement of Rejoinder)
- IV. Oral Hearing & Award



Document Review and Production

- Document Production: Common law approach of intrusive discovery or civil law approach of less production?
 - The amount of production allowed in arbitration is generally less intrusive than in many court proceedings (particularly common law courts)
 - May depend on whether the arbitrators are common law or civil law trained
 - IBA Rules on the Taking of Evidence
 - Document Requests:
 - Common law lawyers may be overly aggressive in document requests which may be rejected by a civil law tribunal;
 - Civil law trained lawyers may tend to be overly restrained in document requests



Where and How to Enforce a Final Arbitral Award

- Enforcement proceedings vary significantly by country.
- In certain countries a foreign arbitral award is being enforced after recognition and/or enforcement action takes place at the Supreme Court.
- In Korea, arbitral award can be enforced at the first instance court and is subject to appeal.
- Timing of Enforcement: Timing can significantly vary depending on jurisdictions.
- Local requirements

1

Arbitral awards are relatively easier to enforce than court judgments

2

International enforcement is recognized under the New York Convention 1958

- Is Appeal Possible?
- Setting Aside an Award and/or Fighting Enforcement:
Assuming one party was highly unsatisfied with the results of the Award, what further actions can be taken.
 - The court of the seat of the arbitration is authorized set aside an award (on limited grounds)
 - Courts of a country where enforcement of arbitral award is sought have authority to refuse the enforcement of the award on limited grounds

- **Grounds and Chances of Success:**
 - Violation of due process rights: Fair opportunity to present case
 - Arbitration procedure inconsistent with parties' agreement
 - Arbitrator selection method inappropriate
 - Scope of award is beyond the submissions by parties
 - Law interpretation is inadequate
 - Public policy grounds
 - Subject of dispute is not a matter that can be settled through arbitration
 - Legal capacity of parties

Vice President, LCIA Court (2015-Present)
Member, SIAC Court of Arbitration (2015-Present)
Chair, SIAC Users Council South Korea National Committee (2015-Present)
Executive Member, Seoul International Dispute Resolution Center (2013-Present)
Board Member, Korean Council for International Arbitration (2012-Present)
Adjunct Professor of Law, SKK University Law School (2010-2016)
Member, ICSID Panel of Conciliators, World Bank (2009-Present)
Member, Executive Committee, Foundation for International Arbitration Advocacy (2009-Present)
Member, International Arbitration Committee, ICC Korea (2007-Present)
Member of Board of Directors, SIAC (2013-2016)
President, LCIA Asia Pacific User's Council (2013-2016)
Vice-Chair, IBA Arbitration Committee (2013-2015)
Inaugural Co-Chair, IBA Asia Pacific Arbitration Group (2013-2014)
Member, IBA Subcommittee on Arbitrators' Conflicts of Interest (2012-2014)

Kim & Chang (1997-Present)

Judge, Seoul District Court (1994-1996)

NYU School of Law (J.S.D., 2003, LL.M., 2000)

Seoul National University (LL.M., 1998, LL.B., 1988)

Admitted to bar, Korea, 1991; New York, 2003; Singapore International Commercial Court, 2015



Dr. Eun Young PARK

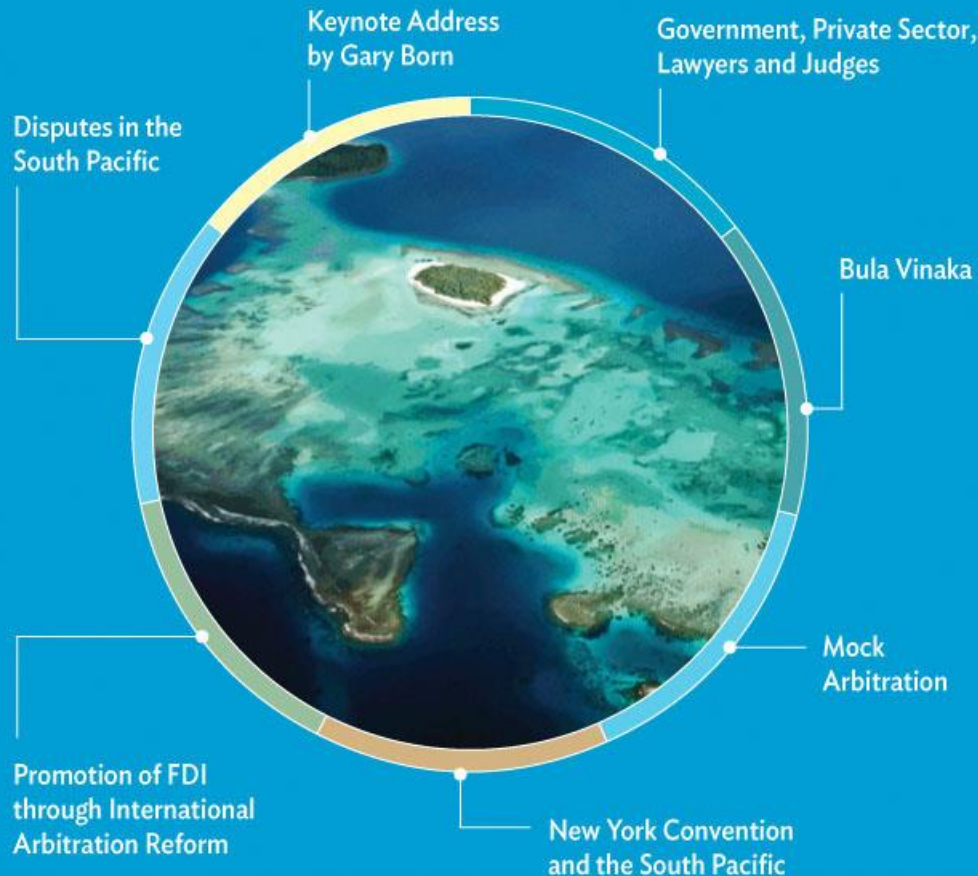
+822-3703-1039
eypark@kimchang.com
www.kimchang.com

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