Arbitrator acceptability in international commercial arbitration

The trading firm perspective

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Abstract

Purpose – The purpose of this paper is to identify the determinants of arbitrator acceptability and investigate whether the perceived costs of arbitration moderate the relationship between arbitrator acceptability and arbitrator characteristics in international commercial arbitration.

Design/methodology/approach – A two-stage analytic process is used to test the dimensionality, reliability and validity of each construct and then the proposed hypotheses.

Findings – The findings show that the five constructs of arbitrator characteristics – reputation, practical expertise, legal expertise, experience and procedural justice – statistically significantly explain arbitrator acceptability. Moreover, perceived cost of arbitration moderates the relationship between arbitrator acceptability and arbitrator characteristics. However, the moderating effect of perceived costs of arbitration is not equal across characteristics.

Research limitations/implications – Knowledge regarding potential moderators of the strength of the indicators of arbitrator acceptability will be useful to future researchers in determining which variables to study in arbitrator selection research.

Practical implications – Useful guidelines in the selection of an international arbitrator are proposed.

Originality/value – This study contributes to arbitrator acceptability literature through the suggestion of a hypothesized model of arbitrator acceptability with auxiliary hypothesis of reputation in international contexts. In addition, this study investigates the moderating role of perceived cost of arbitration on the relationship between arbitrator acceptability and arbitrator characteristics.

Keywords Arbitration, Experience, Reputation, Arbitrator acceptability, Legal expertise, Practical expertise, Procedural justice, Perceived cost of arbitration

Paper type Research paper

The selection of arbitrators is one of the most important factors that differentiate arbitration from litigation, as, unlike litigation, parties select neutrals in arbitration (Giacalone *et al.*, 1992). However, research to date has progressed in piecemeal fashion. The arbitrator acceptability literature (Nelson and Curry, 1981; Bemmels, 1990) has investigated the background factors that influence the selection of arbitrators in the area of domestic arbitration for decades. Another branch of research has developed the theory-based model of arbitrator acceptability reflecting organizational justice to

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predict the arbitrator acceptability (Posthuma and Dworkin, 2000; Posthuma *et al.*, 2000). Recently, arbitrator characteristics and the organizational justice concept have been considered in a single model (Houghton *et al.*, 2013).

Previous research has mainly focused on arbitrator acceptability in the context of domestic arbitration. Now, the time is ripe to examine the "acceptability" of the international arbitrator, as arbitration has remained the dominant type of dispute resolution in international commercial disputes (Dezalay and Garth, 1996; Weigand, 2009). To date, research on the selection of international arbitrators has not investigated arbitrator acceptability on either a theoretical basis or empirical basis, although a couple of works suggest practical international arbitrator selection criteria (Bond, 1991; Bishop and Reed, 1998; Lopez, 2014), and others provide survey results on arbitrator selection (Mistelis, 2004; Schultz and Kovacs, 2012).

This study constructs a model of arbitrator acceptability with an auxiliary hypothesis of reputation of arbitrator, based on the model of Houghton *et al.* (2013). The reputation of the international arbitrator is more important in international arbitration than in domestic arbitration, as international arbitration involves a very close group of elite arbitrators (Kapeliuk, 2010). Moreover, this study tests the moderating effect of the perceived costs of arbitration on the relationship between the arbitrator acceptability and arbitrator characteristics, as the costs of arbitration are not negligible (Franck, 2011; Sachs, 2006).

Arbitrator acceptability: literature review and hypothesized model

A literature review of arbitrator acceptability

According to the theory of methodology of scientific research programs (MSRP), a scientific theory is not developed in an isolated fashion, but evolves in step with a given scientific research program (Lakatos, 1978). The "hard core" of the scientific research program remains unchanged, while the protective belt in the form of auxiliary hypotheses protects the hard core of the scientific research program (Lakatos, 1978). As present theories are rejected, not because they are wrong, but because they have become inappropriate in a changing world (Hicks, 1976), auxiliary hypotheses play the role of protecting the core of the scientific research program. This theory of methodology of the scientific research program is useful to understand the evolution of arbitrator acceptability literature over the decades. To date, the arbitrator acceptability literature can be considered to have evolved over three generations.

The first generation model of the arbitrator acceptability investigates whether the characteristics of arbitrators are important factors for arbitrator selection – these include age, gender, education and experience in employment arbitration. Results are mixed. Some research supports the positive relationship between the background of arbitrators and arbitrator acceptability (Briggs and Anderson, 1980; Lawson, 1981; Nelson and Curry, 1981). Others do not support the relationship between them (Heneman and Sander, 1983; Bemmels, 1990; Kauffman *et al.*, 1994). The first generation of arbitrator acceptability literature lacks a theoretical foundation for their empirical results (Bemmels and Foley, 1996).

The second-generation model of arbitrator acceptability constructs a behavioral model of arbitrator acceptability, based on theory of planned behavior (Ajzen, 1991), optimal control and organizational justice (Greenberg, 1990). In the context of the arbitration process, parties will evaluate the outcome (i.e. the arbitrator's decision) relative to their perceptions of the facts and merits of the case (i.e. the input) to

determine whether the arbitrator's decision and award will be perceived as fair and just (Posthuma and Dworkin, 2000; Houghton *et al.*, 2013). In addition to fairness of outcomes, arbitration parties also tend to be concerned with the fairness of the procedures – that is, the procedural justice, used by the arbitrator (Posthuma and Dworkin, 2000). In the long run, procedural fairness is a strong indicator of perceptions of overall fairness, regardless of the actual outcomes of a situation (Thibaut and Walker, 1978). Arbitration in particular can be viewed as a dispute resolution technique in which the parties have minimal control over the outcomes but maximal control over the process itself, thus making perceptions of procedural justice of particular importance in the context of arbitrator acceptability (Posthuma and Dworkin, 2000). Empirical research has indicated that organizational justice concepts including procedural justice included in the model appear to be significantly related to arbitrator acceptability (Posthuma *et al.*, 2000).

The third generation model of arbitrator acceptability may try to bridge the gap between the first and second generation models of arbitrator acceptability. For example, the third generation model of arbitrator acceptability constructs a parsimonious model where arbitrator characteristics and organizational justice are integrated in a single model (Houghton *et al.*, 2013). An alternative direction of arbitrator acceptability literature might be an extension to the area of international commercial arbitration, as there is no arbitrator acceptability model in this area. Another extension of the arbitrator acceptability literature might be to examine potential moderators of the strength of arbitrator characteristics as indicators of arbitrator acceptability. This paper uses relative perceived cost of arbitration as a moderator of arbitrator acceptability models. Useful future research would be useful to investigate potential candidates of moderators of arbitrator acceptability models.

Model and hypotheses

This study constructs a model examining both arbitrator characteristics and organizational justice concepts simultaneously, following the line of research of Houghton *et al.* (2013). The contributions of this study are as follows. First, this study adds reputation in the category of arbitrator characteristics, reflecting the imperfect competition market of international arbitrators (D'Silva, 2014; Puig, 2014). Second, this study replaces education with practical/legal expertise, as most of the literature includes expertise in the selection criteria of international arbitrator (Landolt, 2012; Mistelis, 2004; Schultz and Kovacs, 2012). Third, this study contributes to arbitrator acceptability literature by examining the moderating effect of perceived costs of arbitration on arbitrator acceptability. Consequently, this study constructs a five-factor model of arbitrator acceptability, where reputation, practical expertise, legal expertise, experience and procedural justice are presumed to represents the arbitrator's characteristics. Next, this study provides a theoretical explanation of the hypotheses in the five-factor model moderated by the perceived costs of arbitration (Figure 1).

The arbitrator characteristics

In this model of arbitrator acceptability, the first factor to influence arbitrator acceptability is arbitrator reputation. This study assumes that the arbitrator follows utility-maximizing behavior and seeks to maximize their income over time (Posner,

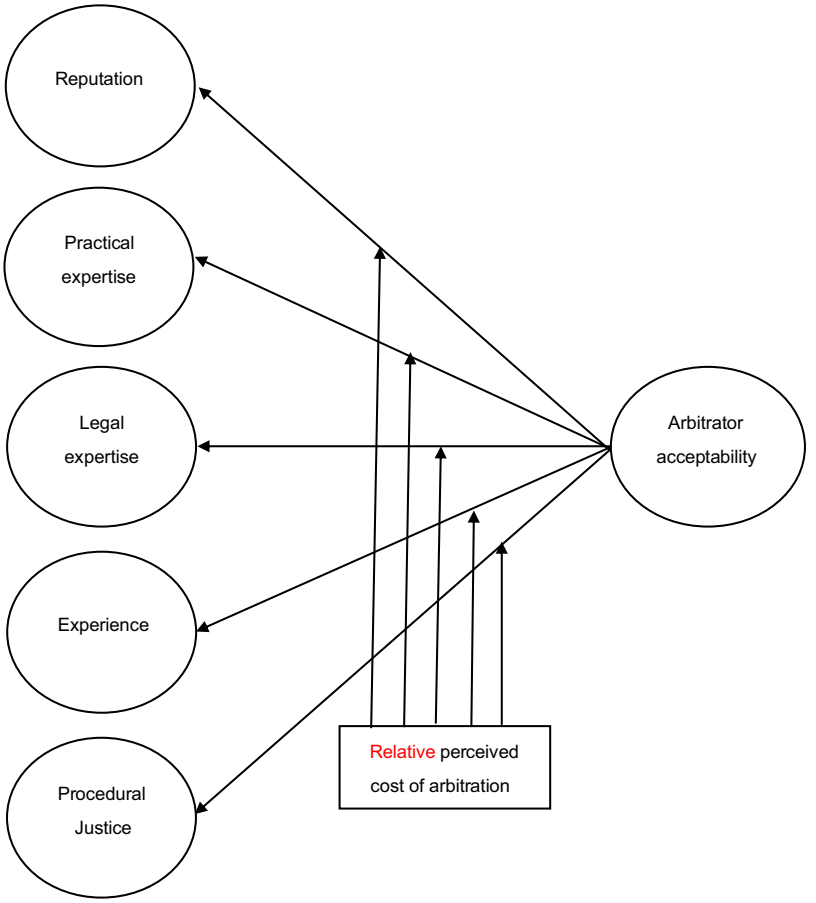

Figure 1.
Conceptual model

2005), reflecting the "technocrat" side of the arbitrator (Dezalay and Garth, 1996). As, unlike public judges in court, arbitrators are commonly chosen and paid for by the parties, arbitrators will have an interest to maximize the chances that they will be chosen again in future disputes (Rogers, 2005).

To be a repeat arbitrator, he/she signals to other elite arbitrators that he/she is a person with reputation, which is defined as a credible signal of high quality (Garoupa and Ginsburg, 2010). Thus, the objective of the international arbitrator is to become a member of the community of elite arbitrators by signaling his or her reputation to other elite arbitrators. The resulting collegiality among international arbitrators will upgrade the possibility to be reappointed (Paulsson, 1997), as trust and affective feelings shard by community members will encourage collegiality among international arbitrators and encourage reappointment to another case (D'Silva, 2014). Accordingly, the hypothesis is as follows:

H1. The reputations of international arbitrators is a significant indicator of arbitrator acceptability.

The second factor to influence arbitrator acceptability is practical expertise. The use of persons with technical expertise as arbitrators is needed, as participation in the arbitral setting by those with management or industry experience offers the best chance of parties' respective positions (Meason and Smith, 1991). Some people can argue that arbitrators should always be lawyers, as the expert witness provides the technical aspects. However, an arbitrator with technical expertise within the arbitration tribunal may explain these issues to other arbitrators better than an expert witness and even determine bias, errors or failure in the expert evidence (Lopez, 2014). Accordingly, the hypothesis is as follows:

H2. The practical expertise of international arbitrators is a significant indicator of arbitrator acceptability.

The third factor to influence arbitrator acceptability is legal expertise. Legal knowledge is prerequisite for the international arbitrator, as arbitral proceedings become more and more similar to common law style litigation (Sachs, 2006). Moreover, unlike domestic arbitration, international commercial arbitration inevitably entails a clash between common law, civil law (Gomez-Palacio, 2009) and Muslim law (Fadlallah, 2009), as the trading partners are diversified across continents. Without sufficient legal expertise, arbitrators will not manage the international disputes efficiently. Accordingly, the hypothesis is as follows:

H3. The legal expertise of international arbitrators is a significant indicator of arbitrator acceptability.

The fourth factor to influence arbitrator acceptability is arbitrator experience. According to early arbitrator acceptability literature, experienced arbitrators are likely to be accepted (Nelson and Curry, 1981), as practitioners are hesitant to accept an unknown quality (Coulson, 1965). The information asymmetry between parties and arbitrators prevents inexperienced arbitrators from entering the arbitration market in the sense that parties do not know ex ante the quality of inexperienced arbitrators, in particular in international context. As arbitrators, as utility maximizers, have motivations to conceal their weakness to be appointed, parties have to pay an information cost to examine their competence, background and ties with other arbitrators and so on. To save the information cost (Alchian and Demsetz, 1972) and transaction cost (Williamson, 1975), parties are expected to choose experienced arbitrators, instead of choosing unknown inexperienced arbitrators. Accordingly, the hypothesis is as follows:

H4. The experience of international arbitrators is a significant indicator of arbitrator acceptability.

The fifth factor to influence arbitrator acceptability is procedural justice. Procedural fairness may be more important than outcome, particularly among those who, judged from an objective standard, have lost the dispute (Vidmar, 1992). In this setting, arbitration can be viewed as a dispute resolution technique in which the parties have minimal control over the outcomes but maximal control over the process itself (Posthuma and Dworkin, 2000). As a matter of fact, procedural justice is more important in international arbitration, as traders transact with business partners who belong to other law systems, and fear of losing the dispute in the court of other party's state of

nationality (Drahozal, 2000). In this uncertain situation, traders are expected to secure the procedure of dispute resolution through the enactment of international rule such as the New York Convention (Ginsburg, 2003). In this connection, international arbitrators are desired to be keenly aware of procedural justice, through which they coordinate the clash between various different national legal systems and differing demands of the parties (Bond, 1991). The hypothesis is as follows:

H5. The procedural justice of international arbitrators is a significant indicator of arbitrator acceptability.

The relative perceived cost of arbitration

The section examines whether the moderator affects the relationship between arbitrator acceptability and arbitrator characteristics. The moderator in our model is the perceived cost of arbitration relative to litigation, as many studies indicate that the rising legal costs motivate parties and judicial systems to switch from litigation to arbitration. As a consequence, business managers were advised to try arbitration rather than litigation to resolve disputes because of rising legal costs (Allison, 1990). Potential litigation costs motivate the entrepreneur to underprice the initial public offerings of equity (Hensler, 1995). In judicial systems, the costs and delay of litigation contributed to the emergence of the multi-door courthouse (Hedeen, 2012).

Nowadays, however, the cost of arbitration is not negligible (Mistelis, 2004; Sachs, 2006). Data, albeit limited, suggest that reported costs represented more than 10 per cent of an average award in investment treaty arbitration (Franck, 2011). Tentative reasons for rising costs of arbitration are twofold:

(1) arbitration often involves complex legal and factual issues, multiple jurisdictions and participants from diverse legal systems in the twenty-first century (Gluck, 2012); and

(2) arbitration may evolve through a process of "judicialization" into a kind of private justice with all the features of a state court (Dezalay and Garth, 1996).

Furthermore, some commentators argue that cost is not considered in the choice of modern arbitration (Drahozal, 2000; Gluck, 2012), and some research provides survey findings that cost of arbitrator is not a meaningful international arbitrator selection criterion (Schultz and Kovacs, 2012).

This paper assumes that disputants have two alternatives of dispute resolution, namely, litigation and arbitration, and that they compare the perceived cost of arbitration with the perceived cost of litigation for their choice of dispute resolution forum. We examine whether the "relative perceived costs of arbitration" moderate the relationship between arbitrator acceptability and arbitrator characteristics in the twenty-first century. The relative perceived cost of arbitration, which is the moderating variable in the model, is defined as the party's overall perception of cost of arbitration relative to litigation, including the arbitrator's fee, and the party's own costs including attorney fees (Gotanda, 1999; Sachs, 2006).

Next, this study constructs hypotheses regarding the moderating variable in the model of arbitrator acceptability. If parties perceive that relative cost of arbitration is subject to upward pressure, they are likely to demand a higher payoff in the arbitration. In other words, distributive justice prevails, as it is realized by obtaining the output in

proportion to input (Posthuma *et al.*, 2000). To win the dispute, parties are more likely to choose a repeat arbitrator who forms a part of a close community of elite arbitrators. A repeat arbitrator might be more interested in maintaining an established reputation as an impartial and accurate decision maker (Kapeliuk, 2010). The community of international arbitrators resembles the mixture of Cottrrell's (2011) community of belief and affective community (D'Silva, 2014). The community of belief is the community that shares common beliefs that stress solidarity and inter-dependence between all of their members. An affective community is one that unites individuals by mutual affection. Accordingly, the hypothesis is as follows:

H6. The reputations of international arbitrators are a strong indicator of arbitrator acceptability when the relative perceived cost of arbitration is high.

Many international commercial arbitration activities have as their subject matter technical or commercial aspects that require determination (Fina, 1999; Lopez, 2014). If parties perceive that the cost of arbitration is high in connection with the cost of technical or commercial determination, they are more likely to choose the international arbitrator with practical expertise. On the other hand, if parties perceive that the relative cost of arbitration is high because of legalization of arbitration process (Dezalay and Garth, 1996; Sachs, 2006), they are more likely to choose the international arbitrator with legal expertise. Accordingly, hypotheses are as follows:

H7. The practical expertise of international arbitrators is a strong indicator of arbitrator acceptability when the relative perceived cost of arbitration is high.

H8. The legal expertise of international arbitrators is a strong indicator of arbitrator acceptability when the relative perceived cost of arbitration is high.

If parties perceive that the relative costs of arbitration are high because of complicated arbitral process (Dezalay and Garth, 1996) as well as complicated subject matter in modern arbitration (Gluck, 2012), they will expect that information cost to search the quality of inexperienced arbitrator is also substantial in a changing world. Accordingly, parties are likely to choose experienced arbitrator to save the information cost (Alchian and Demsetz, 1972) to examine the quality of inexperienced arbitrator. Our hypothesis is as follows:

H9. The experience of international arbitrators is a strong indicator of arbitrator acceptability when the relative perceived cost of arbitration is high.

One of the major problems in international commercial arbitration is that there is no definite rule to govern the allocation of costs of arbitration. Some countries adopt the principle that costs of arbitration should be borne by the party that loses the arbitration (Franck, 2011). However, in USA, parties must generally bear their own expenses (Gotanda, 1999). In this connection, parties are faced with high level of uncertainty of the arbitration costs (Franck, 2011), as they perceive that the relative cost of arbitration is high, depending on the rules of cost allocation of arbitration. Accordingly, parties will choose the international arbitrator who is likely to observe the procedural justice to reduce uncertainty of cost allocation of arbitration. Accordingly, the hypothesis is as follows:

H10. The procedural justice of international arbitrators is a strong indicator of arbitrator acceptability when the relative perceived cost of arbitration is high.

Methodology

This study chooses data on South Korea, as a huge increase in Asian trade led to a huge increase in the number of Asian disputes involving trade among Asian countries and between Asian and non-Asian countries (Kaplan, 2002). In particular, the number of Korean cases submitted to International Chamber of Commerce court of arbitration supersede those of Mainland China, Japan and Hong Kong, singly, over the period of 1998-2010 (Kim, 2012).

Sample and data collection

A list of 530 global trade firms was obtained in 2013 from three large public organizations: the Korean Commercial Arbitration Board, the Daegu Chamber of Commerce and Industry and the Kyunggi Small Business Center. The sample framework was directly related to the research purpose because the main criterion for selecting firms was having a deep interest and understanding of arbitration for at least one of the three critical points, as mentioned above. Prior to the survey, we asked senior managers who are involved in global trade with their partners to fill out a questionnaire. We first inquired as to their willingness to respond the questionnaires via e-mail. To increase the response rate, we decided to follow-up with respondents who were unwilling or unable (due to time inconvenience) to complete the survey via e-mail but were agreeable to being contacted later by telephone. In the end, we were able to collect an additional 36 usable surveys. All respondents received an incentive offered by the survey team.

We received a total of 161 usable questionnaires, providing a response rate of 30.4 per cent. The final sample was representative of the total population based on the demographic criteria, such as annual sales volume, type of firm and number of employees. In terms of annual sales volume, approximately 32.7 per cent of the respondent firms ranged from US$100,000 to 500,000. The remaining 67.3 per cent were distributed as follows: under US$100,000 (10.7 per cent), US$500,000-5 million (30.4 per cent), US$5 million-10 million (5.4 per cent) and over US$10 million (20.8 per cent). The major industry categories included chemical engineering, electronic communication, and machinery & materials. In terms of the number of employees, approximately 48.6 per cent of the respondent firms had 1-29 employees, 22.3 per cent had 30-99, 5.4 per cent had 100-299, 4.5 per cent had 300-499, 5.3 per cent had 500-999 and 13.9 per cent were over 1,000.

Measures

All items were developed based on the relevant literature (Table I) because of the limited empirical research in the arbitration. We developed multi-item measurements for each construct by combining suggestions from the previous work. For example, multi-item scales can represent a comprehensive concept of a construct and also overcome the shortcomings of a single-item measure (Churchill, 1979). All constructs were measured on a seven-point Likert-type scale ranging from 1 = strongly disagree to 7 = strongly agree. Finally, we measured the moderating variable, relative perceived cost of arbitration ("arbitration is perceived to be cheaper than litigation in dispute resolution"), using a single item (1 = strongly disagree to 7 = strongly agree).

According to Churchill's suggestion of development of a new scale (1979), the final questionnaire was developed based on three steps of the scale development process. In

Factor/Item	Loadings EFA	Loadings CFA	Eigen value	α	AVE
Arbitrator acceptability					
Reputation					
The arbitrator should have a professional reputation	0.78	0.80	6.29	0.81	0.54
The arbitrator should have an international reputation	0.81	0.89			
The arbitrator should be trustworthy	0.60	0.54			
The arbitrator should be well-known, even though costs are high	0.79	0.65			
Practical expertise					
The arbitrator should have expertise and knowledge about any particular arbitration area	0.65	0.91	2.52	0.91	0.80
The arbitrator should have business knowledge about any particular arbitration area	0.68	0.98			
The arbitrator is suitable if he/she has work experience in relevant fields	0.61	0.79			
Legal expertise					
The arbitrator should have legal expertise	0.82	0.91	2.68	0.92	0.75
The arbitrator should be familiar with the law associated with relevant cases	0.83	0.91			
The arbitrator is suitable if he/she has any law qualification or law degree	0.73	0.79			
The arbitrator should be familiar with governing law associated with dispute cases	0.81	0.86			
Experience					
The arbitrator is suitable if he/she is experienced in the arbitration filed	0.83	0.92	1.64	0.90	0.83
The arbitrator should be experienced in dispute cases of the arbitration filed	0.83	0.90			
Procedural justice					
The arbitrator should be a practiced hand in arbitration rules of international arbitral institutions	0.78	0.88	1.61	0.94	0.79
The arbitrator should be familiar with arbitration proceedings	0.79	0.94			
The arbitrator should accommodate other arbitrators or interested parties	0.79	0.84			
The arbitrator should make professional preparations for documents of arbitration proceedings	0.81	0.89			
Goodness of fit					
χ^2 (109) = 294.839, CFI = 0.919, TLI = 0.907, RMSEA = 0.069					

Table I.
Results of the EFA

the first step, the initial items for each construct were reviewed and selected from the relevant literature. The second step involved filtration of the sample items by means of a focus group and experts' evaluation to balance the parsimony and comprehensiveness. Focus group members consisted of two scholars in the global business and trade domain and three senior experts who worked in arbitration fields. The third step was to purify the measurement and assess its reliability and validity by conducting a pilot study, which entail assistance of exploratory factor analysis (EFA) and Cronbach's alpha. Various amendments were made through pretesting with 62 post-graduate students. Thus, the final questionnaire was revised based on the results of the pilot study.

A two-stage analytic process, containing the EFA and confirmatory factor analysis (CFA), was used to test the dimensionality, reliability and validity of each construct. As presented in Table I, five factors were extracted and accounted for 73.34 per cent of variance of the retained variables, which were deemed sufficient in terms of the total variance explained. However, five items from reputation (1: "the arbitrator is suitable if he/she is a member of international arbitral institution"), practical expertise (1: "the arbitrator is suitable if he/she has any professional qualification") and arbitrator's experience (1: "no matter the type of dispute cases, the arbitrator should be experienced in the dispute resolution") were finally dropped from the original pool of items due to the result of the EFA. All factor loadings and Cronbach's alphas crossed the required thresholds, indicating that dimensionality and reliability for all constructs are acceptable (Netemeyer *et al.*, 2003).

Next, CFA was conducted to determine the validity of the model using AMOS 21. All variables loaded significantly ($p < 0.05$) on the intended latent constructs, supporting the convergent and discriminant validity of the measurement scales. The model fit statistics indicate that the measurement model fits the data well [χ^2 (109) = 294.839, χ^2/df = 2.705, CFI = 0.919, TLI = 0.907, RMSEA = 0.069]. Item loadings were significant ($p > 0.50$), and all the estimates for the average variance extracted (AVE) were higher than 0.50, supporting the convergent validity of each scale (Bagozzi and Yi, 1988). We assessed the discriminant validity following Fornell and Larcker's (1981) procedures. In this study, the discriminant validity was also acceptable because the square root of the AVE for each construct in bold values (Table II) is greater than the correlation between the construct and other constructs in the corresponding rows and columns.

Analysis

At the first stage of analysis, we tested the main effects in arbitrator acceptability using structural equation modeling. Next, the moderating effect of relative perceived costs of arbitration on the relationship between arbitrator characteristics and arbitrator acceptability was analyzed. In so doing, we conducted median splits based on the value of the moderator variable (Baron and Kenny, 1986). Thus, the moderator was divided into high and low groups. The moderating effect was tested using multi-group causal analysis. First, we computed a non-restricted model and then restricted the path under investigation to be equal across subgroups. A general approach is that a moderating effect exists if the change in the chi-square value is significant (Tabachnick and Fidell, 2001). With 33 more degree of freedom for the restricted mode, for example, the critical value of chi-square difference is 47.400 ($p < 0.05$).

Results

Main effects

To test the main effects of arbitrator characteristics on arbitrator acceptability, the model fit statistics were assessed. The suggested indices used in the current study for a good model fit are χ^2/df less than 3.0, CFI and TLI greater than 0.9 and RMSEA of less than 1.0 (Hus and Bentler, 1999). The model fit statistics indicate that the path model fits the data well [χ^2 (114) = 309.601, χ^2/df = 2.716, CFI = 0.915, TLI = 0.905, RMSEA = 0.071] and proceeds with the subsequent analysis.

Table III shows the parameter estimates of the proposed model on the full data set. All path coefficients are positive in each case and statistically significant at the 0.01 level. In particular, the path coefficients of arbitrator acceptability with five sub-dimensions are very positively significant at the 0.01 level. In line with this observation, we discuss more details in the section of discussion. In particular, we examined whether path coefficients have any statistical difference. In so doing, we tested critical ratios for differences using AMOS 21. The *t*-value (2.14, $p < 0.01$) for the statistical significance was higher than the absolute value of 1.96 at $p < 0.05$, indicating that the difference of path coefficients was supported.

Moderating effects

After confirming the influence of the all postulated relationships, this study tested for the moderating effect. In a first step, an overall chi-square difference test was conducted for the moderating variable, perceived cost of arbitration. A model that imposes quality constraints on all five paths across sub-groups was compared with the general non-restricted model. More specifically, we tested the null hypothesis that the moderator

	1	2	3	4	5
1. Reputation	**0.54**				
2. Practical expertise	0.53	**0.80**			
3. Legal expertise	0.49	0.59	**0.75**		
4. Experience		0.45	0.63	0.58	**0.83**
5. Procedural justice	0.46	0.61	0.59	0.62	**0.79**
Mean	5.15	5.99	5.74	6.05	5.98
SD	1.28	1.03	1.12	0.96	1.04

Notes: The values (in bold) represent AVE; correlations are significant at the 0.01 level

Table II.
Descriptive statistics and correlations

Main model effects	*t*-value	Path coefficient
Arbitrator acceptability → Reputation	5.547	0.54**
Arbitrator acceptability → Practical expertise	8.285	0.77**
Arbitrator acceptability → Legal expertise	8.994	0.83**
Arbitrator acceptability → Experience	10.199	0.96**
Arbitrator acceptability → Procedural justice	9.074	0.86**

Notes: **, $p < 0.01$; *, $p < 0.05$

Table III.
Path coefficients

variable has no influence on the relationships between proposed five dimensions and arbitrator acceptability.

With 33 degree of freedom, Table IV shows the results of the moderating effect of relative perceived costs of arbitration. At first, it can be stated that the relative perceived cost of arbitration does exhibit all moderating effects on the relationship between five sub-dimensions and relative perceived cost of arbitration. This is because the chi-square difference test is significant (chi-square difference with 33 degree of freedom is 47.400, $p < 0.05$).

Interestingly, there are significantly different effects when both low- and high relative perceived costs of arbitration involve. For the group of low relative perceived costs of arbitration, the relationship between reputation and arbitration acceptability decreases ($\beta = 0.39, p < 0.01$), whereas for the group of high relative perceived costs of arbitration, the same relationship improves ($\beta = 0.71$, $p < 0.01$). Other interesting findings of the moderator are for the group of low relative perceived costs of arbitration, the relationship between experience and arbitration acceptability is stable ($\beta = 0.98, p < 0.01$), whereas for the group of high relative perceived costs of arbitration, the same relationship decreases ($\beta = 0.89$, $p < 0.01$). Similarly, for the group of low relative perceived costs of arbitration, the relationship between procedural justice and arbitration acceptability decreases ($\beta = 0.81, p < 0.01$), whereas for the group of high relative perceived costs of arbitration, the same relationship is stable ($\beta = 0.86, p < 0.01$). Meanwhile, when the moderator is involved, there are no differences between practical expertise and arbitration acceptability and between legal expertise and arbitration acceptability.

Discussion

This study constructs and empirically tests an arbitrator acceptability model with auxiliary hypothesis of expertise and reputation in international commercial arbitration. It includes technical expertise as a strong indicator of arbitrator acceptability, as the arbitrator with practical expertise within the arbitration tribunal may explain factual and technical issues to other arbitrators better than an expert witness would (Lopez, 2014). Also, this study includes legal expertise of arbitrator to better manage more legalized arbitral proceedings (Sachs, 2006). It includes reputations of international arbitrators, as reputations are effective for arbitrators to become repeat

		Costs of arbitration			
	Original path	Low	High	χ^2	$\Delta\chi^2$ (df = 33)
Arbitrator acceptability → Reputation	0.54**	0.39**	0.71**	631.874	60.931**
Arbitrator acceptability → Practical expertise	0.77**	0.76**	0.76**		
Arbitrator acceptability → Legal expertise	0.83**	0.86**	0.86**		
Arbitrator acceptability → Experience	0.96**	0.98**	0.89**		
Arbitrator acceptability → Procedural justice	0.86**	0.81**	0.86**		

Note: **Significant at 0.01 level

Table IV.
Results of multi-group analysis

players in international arbitration. In addition, we include two indicators of arbitrator acceptability: experience and procedural justice following earlier arbitrator acceptability literature.

This paper makes at least three original contributions. First, our research is among the earliest studies to empirically examine arbitrator acceptability in an international context. Previous studies have mostly empirically investigated the arbitrator acceptability in domestic contexts. Nowadays, however, the study of arbitrator selection process is becoming more important in international commercial arbitration, as a small number of international arbitrators dominate the international arbitrator market (Rogers, 2005; Kapeliuk, 2010). Nevertheless, there is virtually no theory-based research that examines how parties select arbitrators who are the key decision makers in many international arbitration processes. This paper constructs a theoretical model of arbitrator acceptability and tests various hypotheses of arbitrator acceptability models in international contexts.

The second novelty of our research is that the paper expands upon earlier theoretical and empirical models of arbitrator acceptability to examine expertise and reputation as key indicators of arbitrator acceptability. Our main findings suggest that the model of arbitrator acceptability is effective for explaining the selection of international arbitrators and employment arbitrators alike. This study shows that all five constructs of the arbitrator characteristics – reputation, practical expertise, legal expertise, experience and procedural justice – statistically significantly explain the arbitrator acceptability.

To examine the relative importance of five constructs of arbitrator characteristics, this study implements additional testing of critical ratios to examine whether path coefficients have any statistical difference. As mentioned earlier, our results show that the difference of path coefficients was supported. These results indicate relative importance among five constructs of arbitrator characteristics. Our findings show that experience has relatively strong explanatory power for arbitrator acceptability, which is consistent with the view that experience will dictate the best solutions (Bernardini, 2004), as experienced lawyers as repeat players are known to affect outcomes (McGuire, 1995; Szmer *et al.*, 2007). In addition, experienced arbitrators are needed to overcome the clash of legal cultures (Cremades, 1998). Our findings of procedural justice also corroborate the empirical results of Posthuma *et al.* (2000). In addition, the explanatory power of procedural justice is larger than that of reputation. As reputation may be interpreted as a means to attain distributive justice in this study, our findings may be interpreted as evidence that procedural justice is more important than distributive justice in international commercial arbitration.

The third novelty of our research is that this study is one of the first to examine a potential moderator of the strength of the indicators of arbitrator acceptability. This study constructs the hypotheses of the relative perceived costs of arbitration as a moderating variable to examine the effect of relative perceived cost of arbitration on the relationship between arbitrator acceptability and arbitrator characteristics reflecting the paradigm shift in arbitration in the twenty-first century. Our findings are not equal across characteristics.

One notable finding is that the reputation among the five constructs of arbitrator characteristics is that the relative perceived cost of arbitration strongly affects the moderator of our arbitrator acceptability, as, unlike other constructs, the largest

variation is between low and high cost framework (low of 0.39 to high of 0.71). This result indicates that parties perceive rising arbitration costs relative to litigation, thereby affecting their arbitrator selection behavior. In contrast, practical expertise/legal expertise is not influenced by relatively perceived arbitration costs. These findings imply a stable relationship between practical/legal arbitrator expertise and arbitrator acceptability, irrespective of the relative perceived costs of arbitration.

On the other hand, our findings show that the procedural justice of international arbitrators is a strong indicator of arbitrator acceptability when the relative perceived cost of arbitration is high. This result is consistent with the prediction of the theory of procedural justice. That is, when arbitration cost is perceived to be high, disputants give up truth and choose justice. In other words, disputants are more likely to guarantee procedural justice rather than to solve the disputes (Thibaut and Walker, 1978). Accordingly, our empirical results are consistent with the procedural theory of arbitrator acceptability (Posthuma *et al.*, 2000). On the other hand, our findings in case of experience do not support of our hypothesis based on information asymmetry between parties and arbitrator, which means that the logic of information costs is not applicable to the situation.

Our findings suggest that knowledge regarding potential moderators of the strength of the indicators of arbitrator acceptability will be useful to future researchers in determining which variables to study in arbitrator selection research. This paper uses the relative perceived cost of arbitration as a moderator of arbitrator acceptability. The perceived speed of arbitration is also a potential candidate of moderators of arbitrator acceptability.

Limitations and future research opportunities

This paper has a couple of limitations. First, we do not incorporate language as one of arbitrator characteristics in our hypothesized model. One of the important considerations in choosing international arbitrators is language. In principle, language is the necessary medium for the reaching the accurate resolution of controversial positions (Lopez, 2014; Ulmer, 2011). Thus, language might be an important ingredient of arbitrator acceptability, as international arbitration is basically encounters with entities with different languages.

Second, we do not incorporate the understanding of legal culture as an arbitrator characteristic in our hypothesized model. The international arbitrator can be regarded as a translator of legal culture in international cases (Lowenfeld, 1995; Bishop and Reed, 1998). In former times, international commercial arbitration was a small artisanal specialty. Presently, however, great economic battles are fought and a true arbitration industry has emerged (Lowenfeld, 1995). Consequently, the considerable participation of jurists from very different geographical origins and with very different approaches has caused confrontations between those trained in the common law system and those having a civil law orientation (Fadlallah, 2009).

Furthermore, East Asian societies are known for their emphasis on conciliation (Cremades, 1998). In China, a non-adversarial method of dispute resolution is considered to be one of five themes of legal values underlying both ancient and contemporary Chinese law and legal institutions (Kun, 2013). Arbitral practices show that the combination of conciliation with arbitration normally arises after an arbitration case has been initiated, followed by a transition to conciliation procedures, and where the

conciliation is unsuccessful, the parties return to the arbitration procedure (Harpole, 2007). In similar fashion, it is characteristic of Japanese culture that arbitration has been a kind of reconciliation. For this reason, arbitration in the sense of contemporary Western law is alien to Japan (Kawashima, 1963). Accordingly, Japanese arbitration includes an element of conciliation while the form of arbitration remains (Tashiro, 1995). This emphasis on conciliation is still effective in Japanese arbitration law (Sato, 2005).

On the other hand, the Arab world has shown the distinctive attitudes in choosing the governing law of arbitration. Shari'a plays the dominant role in Arab-related arbitration. In Saudi Arabia, Shari'a, the Islamic law is the only applicable law in the proper sense. In Egypt, Article 2 of the Constitution provides that Islamic law is the main source of legislation (Darwazeh and El-Kosheri, 2008). Faced with those diverse cultural backgrounds of various regions, it is desirable for the international arbitrator to understand different legal cultures to successfully manage arbitral procedure in modern international arbitration.

Third, the data set of the paper is composed of Korean small- and medium-sized businesspeople. One caveat is that the primary entity in arbitrator selection can be head counsel or counsel of the parties instead of the party itself (Queen Mary University of London, 2010). However, most of Korean small businesspersons lack financial resources to maintain legal divisions within their firms. In this connection, we plan to construct another data set consisting of counsels (in-house counsels, head counsels and arbitrators) to corroborate the implication of the arbitrator acceptability model.

Concluding remarks

In perspective of the theory of MSRP, the arbitrator acceptability literature can be viewed as a scientific research program, as the hard core of arbitrator acceptability is preserved through evolution of the models. This study enriches the arbitrator acceptability literature by making at least three contributions:

(1) it is among the first studies to empirically examine arbitrator acceptability in an international context;

(2) it expands upon earlier theoretical and empirical models of arbitrator acceptability to examine expertise and reputation as key indicators of arbitrator acceptability; and

(3) it is one of the first to examine a potential moderator of the strength of the indicators of arbitrator acceptability.

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