

Mediation Practice in South Korea

The only ADR service provider in South Korea, in relation to commercial disputes, is the Korean Commercial Arbitration Board (KCAB), irrespective of domestic or international transactions.

Firstly, let me introduce the KCAB.

The KCAB was established in March 1966, as the only authorized arbitration institution and ADR service provider in South Korea, and has its main office in Seoul and a branch office in Busan. KCAB is a non-profit organisation designed to provide efficient, cost-effective ADR services including arbitration, mediation and consultation. For more information about KCAB, please visit KCAB's homepage.

KCAB provides two kinds of mediation, as well as arbitration and consultation. Mediation is a voluntary, non-binding and confidential means of resolving disputes, where the parties, with the assistance of an independent and neutral third party (the mediator), seek to negotiate an amicable settlement of their dispute. Mediation, as well as Conciliation, is gaining increasing support as an effective and inexpensive means for parties to resolve their differences while maintaining their commercial relationship. KCAB has provided mediation services since 1970 and has amassed extensive experience, having administered thousands of cases over the past forty-one years. In 2011 alone, KCAB expects to handle over 1,700 mediation cases with a successful resolution rate of around 40%.

There are two distinct mediation services provided by KCAB.

One of them is KCAB Mediation. The mediation service is much closer to a conciliation service when compared with the mediation service offered by the Australian Commercial Disputes Centre. KCAB's mediation service is provided at the request of one or more of the parties in a commercial dispute regardless of the existence of a mediation agreement. It is offered free of any administrative, room hiring, or mediator fees. Unlike many other mediation practices offered by other providers, KCAB, not the parties, appoints an appropriately qualified and neutral staff member to act as the mediator. KCAB employs qualified mediators who have expertise in a wide variety of commercial fields. The mediation service is usually used when there is no arbitration agreement between the parties in dispute, and a staff member of KCAB, as the mediator, encourages both parties to communicate, negotiate and reach their own settlement agreement. KCAB expects to provide around 960 cases of this mediation this year with about a 40% success rate.

The other, is Court-annexed Mediation. The South Korean courts have the authority to refer disputes to Mediation where it is determined to be a more preferable or appropriate method of resolving the parties' differences than litigation. As part of this initiative, the South Korean courts may refer commercial disputes to KCAB for mediation at the initial stage of the litigation process. KCAB reviews the nature of the dispute and appoints the mediator from amongst its staff members or guest mediators to assist the parties. It is expected around 760 cases of this type of mediation will be referred to KCAB by the South Korean courts for mediation this year. This mediation service is provided without any charge, and its successful settlement rate is about 40%, similar to the previously mentioned mediation service.

The typical procedure of mediation by KCAB is fairly straightforward and informal, as follows:

- Request for Mediation: the request for mediation should be submitted to KCAB containing information of the parties in dispute, specific details of the business transaction and the dispute,

- purpose of request, and supporting documents via post, e-mail, or the website.
- Notice of Receipt, Request for a statement of defence: upon receipt of the request for mediation, KCAB gives notice to the parties in dispute, advised of the appointment of a mediator and requests a statement of defence to the other party. If KCAB has no response from the other party, KCAB gives such notice to the other party twice more at intervals of about one month.
 - Open Communication, Negotiation: KCAB and the mediator will generally keep in contact with both parties during the process in order to maintain open communication and help the parties reach an amicable solution. Mediation service goes on via correspondence or over the phone, but having a meeting at the KCAB office is possible, without any charge, if it is suitable or requested by both parties.
 - Settlement, Notice and Close: Once the settlement is reached, KCAB or the mediator prepares the settlement agreement and offers a copy to the parties after obtaining parties' confirmation and signatures. And, once a statement of defence is favourable for the claimant, or there is not the remotest chance of success or no response in the course of mediation, KCAB and the mediator give notice to the claimant, attaching the statement of defence, if any, and the respondent, if necessary. By doing so, KCAB closes the case. All mediation cases are closed within 3 months.

In addition, if the settlement agreement is not satisfactorily fulfilled, the settlement agreement or favorable documents obtained during the mediation could be used as evidence in the South Korean courts. In my mediating experience, the vast majority of settled cases are accomplished spontaneously, and the South Korean courts honour the settlement agreement between the parties and take favourable documents obtained in the course of mediation as evidence, in most cases.

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