

ARBITRATION ACT OF KOREA

(Amended by Act No.6626 as of Jan. 26, 2002)

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose) The purpose of this Act is to ensure the proper, impartial and rapid settlement of disputes in private laws by arbitration.

Article 2 (Scope of Application) (1) This Act shall apply where a place of arbitration under Article 21 is in the Republic of Korea. The provisions of Articles 9 and 10 shall also apply even where a place of arbitration has not been determined yet or is not in the Republic of Korea, and the provisions of Articles 37 and 39 shall also apply even where a place of arbitration is not in the Republic of Korea.

(2) This Act shall not affect any other Act by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Act, nor the treaties which are valid in the Republic of Korea.

Article 3 (Definitions) The definitions of terms used in this Act shall be as follows:

1. The term "arbitration" means a procedure to settle any dispute in private laws, not by the adjudication of a court, but by the award of an arbitrator or arbitrators, as agreed by the parties;
2. The term "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have

arisen or which may arise between them in respect of defined legal relationships, whether contractual or not; and

3. The term "arbitral tribunal" means a single arbitrator or a panel of arbitrators who conducts the arbitral proceedings and makes an arbitral award.

Article 4 (Receipt of Written Communications) (1) Unless otherwise agreed by the parties, any written communication shall be deemed to have been received on the day it is delivered to the addressee personally.

(2) If there is no way the personal delivery under paragraph (1) is effected, any written communication shall be deemed to have been received by the addressee on the day it is properly delivered at his habitual residence, place of business or mailing address.

(3) In applying paragraph (2), if none of the addressee's habitual residence, place of business and mailing address can be found after making a reasonable inquiry, a written communication shall be deemed to have been received by him on the day it is sent to his last-known habitual residence, place of business or mailing address by registered mail or any other means which provides a record of the attempt to deliver it.

(4) The provisions of paragraphs (1) through (3) shall not apply to communications in court proceedings.

Article 5 (Waiver of Right to Object) A party who knows that any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be

deemed to have waived his right to object.

Article 6 (Extent of Court Intervention) In matters governed by this Act, no court shall intervene except as provided in this Act.

Article 7 (Competent Court) (1) Matters as prescribed in any of the following subparagraphs shall fall under the jurisdiction of the district court or its branch(the both are referred to as the "court" hereinafter) designated by an arbitration agreement or, failing such designation, under the jurisdiction of the competent court of the place of arbitration or, if the place of arbitration has not yet been determined, under the jurisdiction of the competent court of the respondent's habitual residence or place of business or, if none of those can be found, his place of abode or, if it cannot be found, his last-known habitual residence or place of business:

1. Appointment of an arbitrator under Article 12 (3) and (4);
2. Decision on the request for challenging an arbitrator under Article 14 (3);
3. Decision on the request for terminating the mandate of an arbitrator under Article 15 (2);
4. Decision on the jurisdiction of the arbitral tribunal under Article 17 (6); or
5. Decision on the request for challenging an expert under Article 27 (3).

(2) The taking of evidence under Article 28 shall fall under the jurisdiction of the competent court of a place where it is performed.

(3) Matters as prescribed in any of the following subparagraphs shall fall under the jurisdiction of the court designated by an arbitration agreement or, failing such designation, under the jurisdiction of the competent court of the place of arbitration:

1. Deposit of the original arbitral award under Article 32 (4); or
 2. Application for setting aside an award to court under Article 36 (1).
- (4) An application for the recognition or enforcement of an arbitral award under Articles 37 through 39 shall fall under the jurisdiction of a court as prescribed in any of the following subparagraphs:
1. Court designated by an arbitration agreement;
 2. Competent court of the place of arbitration;
 3. Competent court of the place where a respondent's property is located; or
 4. Competent court of the respondent's habitual residence or place of business or, if none of those can be found, his place of abode or, if it cannot be found, his last-known habitual residence or place of business.

CHAPTER II ARBITRATION AGREEMENT

Article 8 (Form of Arbitration Agreement) (1) An arbitration agreement may be in the form of a separate agreement or in the form of an arbitration clause in a contract.

(2) An arbitration agreement shall be in writing.

(3) An agreement shall be deemed to be an arbitration agreement in writing:

1. If it is contained in a document signed by the parties;
2. If it is contained in an exchange of letters, telegrams, telexes, telefacsimiles or other means of telecommunication which provide a record of the agreement; or
3. If it is contained in an exchange of statements of claim and

defence in which the existence of an agreement is alleged by one party and not denied by another.

(4) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 9 (Arbitration Agreement and Substantive Claim before Court)

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if the respondent raises a plea that an arbitration agreement exists, dismiss the action, unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) The respondent shall raise a plea under paragraph (1) not later than when submitting his first statement on the substance of the dispute.

(3) Where an action referred to in paragraph (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 10 (Arbitration Agreement and Interim Measures by Court) A party to an arbitration agreement may request, before or during arbitral proceedings, from a court an interim measure of protection.

CHAPTER III ARBITRAL TRIBUNAL

Article 11 (Number of Arbitrators) (1) The parties are free to agree on the number of arbitrators.

(2) Failing such agreement referred to in paragraph (1), the number

of arbitrators shall be three.

Article 12 (Appointment of Arbitrators) (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators.

(3) Failing such agreement referred to in paragraph (2),

1. In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator within thirty days after a party has received a request for initiating the procedure for his appointment from the other party, he shall be appointed, upon request of a party, by the court; or

2. In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court.

(4) Where, under an appointment procedure agreed upon in paragraph (2), it falls under any of the following subparagraphs, the appointment shall be made, upon request of a party, by the court:

1. A party fails to act as required under such procedure;
2. The parties or two arbitrators are unable to reach an agreement expected of them under such procedure; or
3. A third party including an institution, entrusted to appoint the arbitrator or arbitrators, fails to do so.

(5) A decision of the court under paragraph (3) or (4) shall be

subject to no appeal.

Article 13 (Grounds for Challenge) (1) When a person is approached in connection with his possible appointment as an arbitrator or has already been appointed as such, he shall without delay disclose all circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

(2) An arbitrator may be challenged only if circumstances referred to in paragraph (1) exist, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 14 (Challenge Procedure) (1) The parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing such agreement referred to in paragraph (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in Article 13 (2), send a written statement of the reason for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under the procedure of paragraph (1) or (2) is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court to decide on the challenge. While such a request is pending in court, the arbitral tribunal may continue the arbitral proceedings or make an award.

(4) A decision of the court under paragraph (3) shall be subject to no appeal.

Article 15 (Termination of Mandate of Arbitrator Due to His Failure of Impossibility to Act) (1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination.

(2) If a controversy remains concerning the termination of the mandate of the arbitrator under paragraph (1), any party may request the court to decide on the termination of the mandate.

(3) A decision of the court under paragraph (2) shall be subject to no appeal.

Article 16 (Appointment of Substitute Arbitrator) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the procedure that were applicable to the appointment of the arbitrator being replaced.

Article 17 (Ruling of Arbitral Tribunal on its Jurisdiction) (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence on the substance of the dispute. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its

authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either case of paragraphs (2) and (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal may rule a plea referred to in paragraph (2) or (3) either as a preliminary question or in an arbitral award on the merits.

(6) If the arbitral tribunal rules as a preliminary question that it has jurisdiction under paragraph (5), any party who is dissatisfied with that ruling may request, within thirty days after having received notice thereof, the court to decide on the jurisdiction of the arbitral tribunal.

(7) While a request under paragraph (6) is pending in court, the arbitral tribunal may continue the arbitral proceedings or make an arbitral award.

(8) A decision of the court under paragraph (6) shall be subject to no appeal.

Article 18 (Interim Measure) (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at a request of a party, decide on such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may determine an amount of security to be provided by the respondent in lieu of such measure.

(2) The arbitral tribunal may require the party requesting the interim measure to provide appropriate security.

CHAPTER IV ARBITRAL PROCEEDINGS

Article 19 (Equal Treatment of Parties) The parties shall be equally treated in the arbitral proceedings and each party shall be given a full opportunity of presenting his case.

Article 20 (Arbitral Proceedings) (1) Subject to the mandatory provisions of this Act, the parties are free to agree on the arbitral proceedings.

(2) Failing such agreement referred to in paragraph (1), the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal shall include the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 21 (Place of Arbitration) (1) The parties are free to agree on the place of arbitration.

(2) Failing such agreement referred to in paragraph (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding the provisions of paragraphs (1) and (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 22 (Commencement of Arbitral Proceedings) (1) Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date when a request for that dispute to be referred to arbitration is received by the respondent.

(2) In the request referred to in paragraph (1), the parties, the subject-matter of the dispute and the contents of the arbitration agreement shall be contained.

Article 23 (Language) (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine such language or languages, and otherwise the Korean language shall be used.

(2) The agreement or determination referred to in paragraph (1) shall, unless otherwise specified therein, apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(3) The arbitral tribunal may, if considered necessary, order a party to submit any documentary evidence, accompanied by a translation into the language or languages referred to in paragraph (1).

Article 24 (Statement of Claim and Defence) (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state his claim and the facts supporting it, and the respondent shall state his defence in respect of these particulars.

(2) The parties may submit with their statements of claim or defence all documents they consider to be relevant or may add a reference to other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers that such amendment or supplement might cause the considerable delay in the arbitral proceedings.

Article 25 (Hearings) (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral

hearings or whether the proceedings shall be only conducted on the basis of documents or other materials. Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any oral hearing and of any meeting of the arbitral tribunal for the purpose of taking evidence.

(3) All statements, documents or other information supplied to the arbitral tribunal by a party shall be communicated to the other party.

(4) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 26 (Default of Party) (1) If the claimant fails to communicate his statement of claim in accordance with Article 24 (1), the arbitral tribunal shall terminate the proceedings.

(2) If the respondent fails to communicate his statement of defence in accordance with Article 24 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations.

(3) If any party fails to appear at a hearing or to produce documentary evidence within a fixed period of time, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

(4) The provisions of paragraphs (1) through (3) shall not apply, if otherwise agreed by the parties, or if the arbitral tribunal considers that there exists any sufficient cause for the failure.

Article 27 (Expert) (1) Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by it. For this purpose, the arbitral tribunal may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) The provisions of Articles 13 and 14 shall apply *mutatis mutandis* to an expert appointed by the arbitral tribunal.

Article 28 (Court Assistance in Taking Evidence) (1) The arbitral tribunal may, either on its own initiative or upon the request of a party, request from a competent court assistance in taking evidence.

(2) When requesting the assistance under paragraph (1), the arbitral tribunal may, in writing, specify the matters to be recorded in the protocol of the court and other particulars necessary for investigation.

(3) The court referred to in paragraphs (1) shall, without delay after taking evidence, send the records on taking evidence such as a certified copy of protocol for examination of witness or inspection of property to the arbitral tribunal.

(4) The arbitral tribunal shall pay necessary expenses for taking evidence to the court referred to in paragraph (1).

CHAPTER V. MAKING OF ARBITRAL AWARD

Article 29 (Rules Applicable to Substance of Dispute) (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of the nation and not to its International Private Act.

(2) Failing the designation referred to in paragraph (1), the arbitral tribunal shall apply the law of the State with which the subject-matter of the dispute is most closely connected.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) The arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 30 (Decision-making by Arbitral Tribunal) Unless otherwise agreed by the parties, in arbitral proceedings with not less than three arbitrators, any decision of the arbitral tribunal shall be made by a majority of all its members. However, questions of procedure may be solely decided by a presiding arbitrator, if so agreed by the parties or if so authorized by all members of the arbitral tribunal.

Article 31 (Settlement) (1) If, during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate such proceedings. The arbitral tribunal may, if requested by the parties, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms under paragraph (1) shall be made in accordance with the provisions of Article 32 and shall state that it is an award.

(3) The arbitral award referred to in Paragraph (2) shall have the same effect as any other award on the merits of the case.

Article 32 (Form and Contents of Award) (1) The award shall be made in writing and shall be signed by all arbitrators. However, if, in arbitral proceedings with not less than three arbitrators, there exist circumstances where less than half members of the arbitral tribunal cannot sign, other arbitrator may, instead of them, sign with reason therefor.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reason are to be given or the award is an award on agreed terms under Article 31.

(3) The award shall state its date and place of arbitration. The award shall be deemed to have been made on that date and at that place.

(4) The duly authenticated award made and signed in accordance with paragraphs (1) through (3) of this Article shall be delivered to each party in accordance with paragraphs (1) through (3) of Article 4, and the original award shall be sent to and deposited with the competent court, accompanied by a document verifying such delivery.

Article 33 (Termination of Proceedings) (1) The arbitral proceedings are terminated by the final award or by a decision of the arbitral tribunal in accordance with paragraph (2) of this Article.

(2) The arbitral tribunal shall make a decision for the termination of the arbitral proceedings when it falls under any of the following

subparagraphs:

1. The claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
2. The parties agree on the termination of the proceedings; or
3. The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings, subject to the provisions of Article 34.

Article 34 (Correction or Interpretation of Award or Additional Award)

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties, a party may request the arbitral tribunal:

1. To correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
2. To give an interpretation of a specific point or part of the award, if so agreed by the parties; or
3. To make an additional award as to claims presented in the arbitral proceedings but omitted from the award, unless otherwise agreed by the parties.

(2) When making any request in accordance with paragraph (1), a party shall give notice to the other party to that effect.

(3) The arbitral tribunal shall decide on the issue within thirty days of the receipt of the request under subparagraphs 1 or 2 of paragraph (1) and within sixty days of the receipt of the request under subparagraph 3 of paragraph (1) respectively. The

interpretation under subparagraph 2 of paragraph (1) shall form part of the award.

(4) The arbitral tribunal may, on its own initiative, correct any error of the type referred to in subparagraph 1 of paragraph (1) within thirty days of the date of the award.

(5) The arbitral tribunal may extend, if necessary, any period of time as referred to in paragraph (3).

(6) The provisions of Article 32 shall apply *mutatis mutandis* to the form of a correction or interpretation of the award or to an additional award.

CHAPTER VI EFFECT OF AWARD AND RECOURSE THEREAGAINST

Article 35 (Effect of Arbitral Award) The arbitral award shall have the same effect on the parties as the final and conclusive judgement of the court.

Article 36 (Application for Setting Aside Award to Court) (1) Recourse against an arbitral award may be made only by an application for setting aside to a court.

(2) An arbitration award may be set aside by the court only if:

1. The party making the application furnishes proof that:

(a) a party to the arbitration agreement was under some incapacity under the law applicable to him; or the said agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the law of the Republic of Korea; or

(b) a party making the application was not given proper notice of the appointment of the arbitrator or arbitrators or of the arbitral

proceedings or was otherwise unable to present his case; or

(c) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. If the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(d) the composition of the arbitral tribunal or the arbitral procedure were not in accordance with the agreement of the parties, unless such agreement was in conflict with any provision of this Act from which the parties cannot derogate or, failing such agreement, were not in accordance with this Act; or

2. The court finds on its own initiative that:

(a) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Republic of Korea; or

(b) the recognition and enforcement of the award is in conflict with the good morals or other public policy of the Republic of Korea.

(3) An application for setting aside the award shall be made within three months of the date on which the party making that application has received the duly authenticated award or, if a request has been made under Article 34, the duly authenticated copy of a correction or interpretation or an additional award.

(4) An application for setting aside the award may not be made after the judgement for recognition or enforcement of the award rendered by a court of the Republic of Korea becomes final and conclusive.

CHAPTER VII RECOGNITION OR ENFORCEMENT OF AWARD

Article 37 (Recognition or Enforcement of Arbitral Award) (1)
Enforcement of an arbitral award shall be granted by the judgment of a court.

(2) The party applying for the recognition or enforcement of an award shall submit the following documents. If the award or the arbitration agreement is not made in the Korean language, a duly certified translation thereof into the Korean language shall be accompanied:

1. The duly authenticated award or a duly certified copy thereof;
and
2. The original arbitration agreement or a duly certified copy thereof.

Article 38 (Domestic Awards) An arbitral award made in the territory of the Republic of Korea shall be recognized or enforced, unless any ground referred to in Article 36 (2) can be found.

Article 39 (Foreign Awards) (1) Recognition or enforcement of a foreign arbitral award to which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 applies shall be granted in accordance with the Convention.

(2) The provisions of Articles 217 of the Civil Procedure Act, Articles 26(1) and 27 of the Civil Execution Act shall apply *mutatis mutandis* to the recognition or enforcement of a foreign arbitral award to which the Convention referred to in Paragraph (1) does not apply.

CHAPTER VIII SUPPLEMENTARY PROVISIONS

Article 40 (Assistance to Commercial Arbitration Institution) In order to secure the impartial and rapid settlement of domestic or international commercial disputes and to establish the international transaction order by this Act, the Government of the Republic of Korea may provide all or part of necessary expenses for an incorporated association conducting the commercial arbitration and designated by the Minister of Commerce, Industry and Energy.

Article 41 (Establishment and Approval of Arbitration Rules) The incorporated association designated as a commercial arbitration institution under Article 40 shall obtain the approval of the Chief Justice of the Korean Supreme Court to establish or amend its arbitration rules.

ADDENDA

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.

(2) (Transitional Measures on Arbitration Cases in Process) Cases for which the arbitral proceedings have been in process before this Act enters into force shall be governed by the previous pertinent provisions.

(3) (Transitional Measures on Designation of Commercial Arbitration Institution) The Korean Commercial Arbitration Board, Incorporated Association which has been established when this Act enters into force, shall be deemed to be designated as an incorporated association conducting the commercial arbitration under the provisions of amended Article 40, and its commercial arbitration

rules shall be deemed to be approved by the Chief Justice of the Korean Supreme Court under the provisions of amended Article 41.