

# INTERNATIONAL MEDIATION RULES

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# **International Mediation Rules**

**Korean Commercial Arbitration Board**

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## Article 1. Application of the Rules

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1. International Mediation pursuant to the International Mediation Rules (the “Rules”) of the Korean Commercial Arbitration Board (“KCAB”) is administered by KCAB. The parties may agree to a mediation pursuant to the UNCITRAL Mediation Rules administered by KCAB.
2. The Rules shall apply to all mediations where:
  - (a) the parties have agreed in writing to mediate disputes under the Rules; or
  - (b) in the absence of an agreement between the parties to refer their dispute to the Rules, any party wishes to propose referring the dispute to the Rules to another party; or
  - (c) the parties have agreed in writing to mediate disputes at KCAB without designating particular rules, and at least one of the parties to the mediation, at the time of the filing of the Request for Mediation(see definition below in Article 2(1)), has its principal place of business or place of habitual residence in a jurisdiction other than the Republic of Korea.
3. In the event of any doubt as to the validity or the existence of an agreement to mediate at KCAB, KCAB may request further information from the parties or take other steps as may be appropriate.
4. The parties may at any time agree to modify the provisions of the Rules, subject to the agreement of the mediator and KCAB.

5. If the Rules, or any agreement pursuant to Article 1(4), conflicts with a provision of law from which the parties cannot derogate, that provision shall prevail.

## **Article 2. Commencement of Mediation (Prior Mediation Agreement)**

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1. Where there is an agreement between the parties to refer their dispute to the mediation under the Rules, any party or parties wishing to commence mediation pursuant to the Rules shall file a written Request for Mediation (the “Request”) with KCAB. The Request shall be submitted to KCAB by courier, facsimile, e-mail or other means.
2. The Request shall include the following information:
  - (a) the names, addresses, telephone numbers and email addresses of all parties to the dispute and of any representatives, if any, in the mediation;
  - (b) a brief statement about the nature of the dispute and relief requested;
  - (c) any recommendations for a specific mediator or qualifications that the mediator should possess;
  - (d) any agreement as to the language(s) of the mediation, if any, or, in the absence thereof, any proposal as to such language(s);
  - (e) any agreement as to time limits for conducting the mediation, if any, or, in the absence thereof, any proposal with respect thereto;

(f) any agreement as to the location of any physical (and virtual) meetings, if any, or, in the absence thereof, any proposal as to such location; and

(g) the parties’ contract which contains the mediation clause, if any, or the parties’ agreement to mediate.

3. Together with the Request, the party or parties filing the Request shall pay the filing fee required by Appendix A in force on the date the Request is filed.
4. KCAB shall acknowledge receipt of the Request and filing fee in writing to the parties via email or other methods as appropriate, and send the copy of the request to the other party.
5. Where there is an agreement to refer to the Rules, the date on which the Request is received by KCAB shall, for all purposes, be deemed to be the date of the commencement of the proceedings.
6. A party may be represented by persons of its choice in proceedings under the Rules. The names and addresses of such persons shall be communicated in writing to all parties and to KCAB.

### **Article 3. Commencement of Mediation (No Prior Mediation Agreement)**

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1. In the absence of an agreement of the parties to refer their dispute to the mediation under the Rules, any party that wishes to propose referring the dispute to the Rules to another party may do so by sending a written Request to KCAB containing the information specified in Article 2.2., subparagraphs (a)-(f). Upon receipt of such Request, KCAB will inform all other parties of the proposal and may assist the parties in considering the proposal.
2. Together with the Request, the party or parties filing the Request shall pay the filing fee required by Appendix A hereto in force on the date the Request is filed.
3. Where the parties agree to refer their dispute to the mediation under the Rules, the mediation proceedings shall be deemed to commence on the date on which KCAB sends written confirmation to the parties that an agreement to mediate has been reached.
4. Where the parties do not reach an agreement to refer their dispute to the mediation under the Rules within 30 days from the date of the receipt of the Request by KCAB or within such additional time as may be reasonably determined by KCAB, the proceedings shall not commence.

### **Article 4. Place and Language(s) of the Mediation**

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1. In the absence of an agreement between the parties, KCAB may, in consultation with the parties, determine whether the meetings of the mediator and the parties will be held in-person or virtually, and in case of in-person meeting, the location of physical meeting of the mediator and the parties or may invite the mediator to do so after the mediator has been confirmed or appointed.
2. In the absence of an agreement of the parties, KCAB may determine the language(s) in which the mediation shall be conducted or may invite the mediator to do so after the mediator has been confirmed or appointed.

### **Article 5. Appointment of the Mediator(s)**

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1. The parties may jointly nominate a mediator from or outside KCAB's Panel of Mediators to conduct the mediation. The nomination shall be confirmed by KCAB.
2. If the parties are unable to jointly nominate a mediator within 15 days from the date of commencement of the mediation, KCAB shall appoint a mediator.
3. In confirming or appointing a mediator, KCAB shall consider the prospective mediator's attributes, including but not limited to nationality, language, skills, qualifications, areas of expertise, experience, and the prospective mediator's availability.

4. Before confirmation or appointment by KCAB, a prospective mediator shall make a written declaration of his or her acceptance, availability, impartiality and independence, and shall also immediately disclose to the parties any known actual or potential conflicts of interest which could reasonably raise any questions as to his or her impartiality and independence.
5. If any party objects to the mediator appointed by KCAB and notifies KCAB and all other parties in writing, stating the reasons for such objection within 15 days of receipt of notification of the appointment, KCAB shall appoint another mediator.
6. KCAB may replace the mediator during the course of the mediation in the event that a conflict arises or in any exceptional circumstances raised by the mediator or any of the parties.
7. The parties may nominate or request the appointment of more than one mediator. Where appropriate, KCAB may propose to the parties that there be more than one mediator. In this case, references to “mediator” under the Rules shall then be deemed as reference to “mediators”.

## **Article 6. Fees and Costs**

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1. The party or parties filing the Request shall pay KCAB a non-refundable filing fee, as set out in Appendix A.
2. Following the commencement of the mediation, KCAB shall request all parties to pay one or more deposits to cover KCAB’s administrative expenses,

as set out in Appendix A, the mediator’s fees, and other reasonable expenses incurred by KCAB and the mediator.

3. KCAB may stay or terminate the mediation if any requested deposit is not paid.
4. Upon termination of the mediation, KCAB shall fix the total costs of the mediation and reimburse the parties for any excess payment or bill the parties for any balance required pursuant to the Rules.
5. Unless agreed otherwise in writing, all deposits requested and mediation costs fixed by KCAB shall be borne equally by the parties.
6. Any party shall be free to pay the unpaid balance of any deposits and costs should the other party fail to pay its share.
7. A party’s other expenditure shall remain the responsibility of that party, unless otherwise agreed by the parties.

## **Article 7. Conduct of the Mediation**

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1. In establishing and conducting the mediation, the mediator shall be guided by the wishes of the parties and shall treat them with fairness and impartiality.
2. The parties shall make every effort to conduct the mediation proceedings in an expeditious manner and to prepare for, and engage in, the mediation in good faith.
3. KCAB may provide general administrative support to facilitate the conduct of the mediation proceedings.

4. The mediator may communicate with the parties orally, in writing, in person, virtually by conference call, by video-conference, or by using other communications technology, or in a combined form, or otherwise, and may do so jointly or separately.
5. The mediator may obtain expert advice or assistance in technical matters with the parties' consent and the parties shall bear any relevant expenses incurred in this regard.
  - iv. written notice from KCAB to the parties that any payment by one or more parties pursuant to the Rules has not been made for more than 15 days after the due date for payment; or
  - v. written notice from KCAB to the parties that, in the judgment of KCAB, there has been a failure to nominate a mediator or that it has not been reasonably possible to appoint a mediator.

## **Article 8. Termination of the Mediation Proceedings**

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1. The mediation commenced pursuant to the Rules shall terminate upon:
  - (a) the signing by the parties of a written settlement agreement; or
  - (b) the issuance of written confirmation of termination by KCAB subsequent to the earliest occurrence of any one of the following:
    - i. written notice of withdrawal given by any party to KCAB, the mediator and the other parties;
    - ii. written notice by the mediator to KCAB and the parties that the mediation should be terminated;
    - iii. written notice from KCAB to the parties that any time limit set for the mediation, including any extension thereof, has expired;

## **Article 9. Settlement Agreement**

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1. Any settlement agreement reached during the course of mediation shall be in writing and signed by or on behalf of the parties.
2. Where any settlement agreement has been reached, the mediator shall promptly notify KCAB, and provide KCAB with a copy of such agreement.
3. For the mediations conducted under the Rules, the parties may request the mediator to sign the settlement agreement or any other document indicating that the mediation was carried out or the KCAB to issue an attestation that a settlement was reached in the course of a mediation to ensure that the enforcement of such settlement agreement under the United Nations Convention on International Settlement Agreements Resulting from Mediation or other applicable laws.



## Article 10. Confidentiality

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1. In the absence of any agreement of the parties to the contrary and unless prohibited by applicable law:
  - (a) the proceedings, but not the fact that they are taking place, have taken place or will take place, are private and confidential;
  - (b) any settlement agreement between the parties shall be kept confidential, except that a party shall have the right to disclose it to the extent that such disclosure is required by applicable law or necessary for purposes of its implementation or enforcement.
2. Unless required to do so by applicable law and in the absence of any agreement of the parties to the contrary, a party shall not in any manner produce as evidence in any judicial, arbitral or similar proceedings:
  - (a) any documents, statements or communications which are submitted by another party or by the mediator in or for the mediation proceedings, unless they can be obtained independently by the party seeking to produce them in the judicial, arbitral or similar proceedings;
  - (b) any views expressed or suggestions made by any party within the mediation proceedings with regard to the dispute or the possible settlement of the dispute;
  - (c) any admissions made by another party within the mediation proceedings;
  - (d) any views or proposals put forward by the mediator within the mediation proceedings; or
  - (e) the fact that any party indicated within the proceedings that it was ready to accept a proposal for a settlement.

3. No persons other than the parties, their representatives and the mediator may attend the mediation proceedings, save with the permission of the parties and the mediator.
4. There shall be no transcript or formal record of the mediation, save for that which may be necessary to record any settlement agreement.

## Article 11. General Provisions

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1. Unless the parties agree otherwise, the mediator shall not act as an arbitrator, representative, counsel, expert, judge, witness or in any other capacity in respect of a dispute that is the subject of the present or past mediation proceedings, or any dispute arising out of or in connection with the same contract or legal relationship or the related contract or legal relationship.
2. Either party may commence any arbitration or judicial proceedings in respect of a dispute that is the subject of mediation proceedings under the Rules where, in its opinion, such proceedings are necessary for preserving its rights. The commencement of such proceedings shall not be deemed to be an abandonment of an agreement to mediate, or a termination of the mediation proceedings.
3. The mediator, KCAB and its directors, officers and employees shall not be liable to any person for any act or omission in connection with the mediation proceedings unless such act or omission is intentional or the result of gross negligence.

## SUPPLEMENTARY PROVISIONS

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1. (Effective Date) The Rules shall be effective on and from January 1, 2024.

## Appendix A. Fees and Costs

### Article 1. Filing Fee

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Each Request pursuant to the Rules must be accompanied by a filing fee of KRW 1,000,000. The filing fee is non-refundable. However, the Secretariat may, in its discretion, exempt or reduce payment of the filing fee where the dispute amount is below a specific amount as determined by the Secretariat.

### Article 2. Administrative Expenses

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1. The parties shall pay the administrative expenses of KCAB as set out below.

(Unit: KRW)

Amount in dispute	Administrative expenses
up to 200,000,000	500,000
over 200,000,000 to 1,000,000,000	1,000,000
over 1,000,000,000 to 2,000,000,000	3,000,000
over 2,000,000,000 to 10,000,000,000	10,000,000
over 10,000,000,000 to 50,000,000,000	15,000,000
over 50,000,000,000 to 100,000,000,000	20,000,000
over 100,000,000,000	25,000,000

2. Where the amount in dispute is not stated, the administrative expenses shall be KRW 3,000,000.

### **Article 3. Mediator's Fees and Expenses**

1. Unless otherwise agreed by the parties and the mediator, the mediator's fees are calculated on the basis of the time spent by the mediator in the mediation including his/her preparation time at the hourly rate agreed by the parties and the mediator prior to the mediation.
2. The amount of reasonable expenses of the mediator shall be fixed by KCAB.

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