

KCAB issues revised international arbitration rules

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The 2016 revised International Arbitration Rules (the “2016 Rules”) of KCAB introduce changes that are more in line with other major international arbitration rules. The 2016 Rules apply to KCAB arbitration proceedings commenced after 1 June 2016.

Introduction

Following recent amendments to the Korean Arbitration Act¹, the Korean Commercial Arbitration Board (“KCAB”) has now introduced its 2016 Rules. The 2016 Rules represent a further adaption of the KCAB Rules to well-known international arbitration rules - - in this case, the changes introduced are similar to provisions of the ICC², SIAC³, and LCIA⁴ Arbitration Rules. The 2016 Rules should allow KCAB to increase efficiency and fairness of its international arbitration proceedings.

The 2016 Rules have made four significant changes. These are:

- Provisions that allows for more efficient case management, including consolidation of related arbitrations and joinder of additional parties, as well as an increase in the claim amount for the expedited arbitration from KRW 200,000,000 to KRW 500,000,000.
- Introduction of the emergency arbitrator proceedings.
- Measures to increase fairness in appointing arbitrators, including the requirement for arbitrators to sign and submit statements showing their acceptance, impartiality and independence, and the changes in the parties’ choice of arbitrators from appointment to nomination.
- Provisions defining conservatory and interim measures.

Overview of some of the key changes

A. Efficiency in case management

The 2016 Rules include new provisions that can increase the efficiency of KCAB proceedings. The changes follow similar provisions in other major international arbitration rules. For example:

¹ The Korean Arbitration Act was passed by the National Assembly on 19 May 2016 and promulgated on 29 May 2016. The revised Act will come into effect on 30 November 2016.

² 2012

³ 2013

⁴ 2014

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- Article 21 allows joinder of additional parties if all parties and the additional party agree in writing or the additional party is a party to the same arbitration agreement. SIAC, LICA, ICC and HKIAC⁵ all allow joinder in their arbitration rules.
 - Article 23 allows consolidation of claims between the same parties. With the exception of SIAC (which is likely to be updated very shortly), all the other major international arbitration rules provide similar provisions.
 - Article 43 broadens the scope of application of expedited procedures by increasing the claim amount for the expedited arbitration from KRW 200,000,000 to KRW 500,000,000.
 - Article 28 requires parties to submit translations of the submitted documents when requested by the Secretariat of the Arbitration Tribunal. The SIAC, LCIA, and HKIAC rules each include similar provisions. Additionally, Article 4 allows documents to be submitted by electronic means such as e-mail. LCIA made a similar change in its 2014 rules.

B. Emergency Arbitrators Procedures

One of the significant changes in the 2016 Rules is including emergency arbitrator proceedings. The SIAC, LCIA, ICC and HKIAC rules all include similar provisions allowing appointment of emergency arbitrators. Appendix 3 of the 2016 Rules specifies its application as well as the appointment and the power of emergency arbitrators.

Additionally, it is important to note that the emergency arbitrator procedure that allows a party seeking conservatory and interim measures to apply for an appointment of an emergency arbitrator is separate from the conservatory and interim measures that the Arbitral Tribunal may order. Article 3 (7) of the Appendix 3 specifies that the power of the emergency arbitrator is to be terminated upon constitution of the Arbitral Tribunal.

C. Fairness in Appointment of Arbitrators

The 2016 Rules include provisions that increase objectivity in the appointment of arbitrators in the KCAB arbitrations.

- Article 10(2) requires that an arbitrator who accepts an appointment or nomination to sign and submit a Statement of Acceptance and a Statement of Impartiality and Independence. The LCIA, ICC and HKIAC rules have similar requirements.
- The 2016 Rules change the parties' choice of arbitrators from appointment to nomination (Article 12). Other major international arbitration rules, such as the SIAC and LCIA rules, also use nomination as a method for controlling inappropriate appointments.

D. Definitions of Conservatory and Interim Measures

Article 32 of the 2016 Rules now enumerates the conservatory and interim measures the Arbitral Tribunal may provide (following similar changes introduced in the Korean Arbitration Act). The measures are:

- (a) To maintain or restore the status quo pending determination of the dispute;
- (b) To take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitration proceedings themselves;
- (c) To provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) To preserve evidence that may be relevant and material to the resolution of the dispute.

Expected Impact of 2016 Rules

The new provisions in the 2016 Rules that allow for consolidation of related arbitrations and joinder of additional parties, as well as the appointment of an emergency arbitrator, would increase efficiency and flexibility of KCAB proceedings. Additionally, definitions for conservatory and interim measures, while

⁵ 2013

increasing predictability, may have the effect of limiting the power of the Arbitration Tribunals to grant other kinds of measures not enumerated.

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