

ARBITRATION ACT

Wholly Amended by Act No. 6083, Dec. 31, 1999

Amended by Act No. 6465, Apr. 7, 2001

Act No. 6626, Jan. 26, 2002

Act No. 10207, Mar. 31, 2010

Act No. 11690, Mar. 23, 2013

Act No. 14176, May 29, 2016

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to ensure the appropriate, fair and prompt settlement of disputes in private law by arbitration.

Article 2 (Scope of Application)

(1) This Act shall apply to cases where the place of arbitration under Article 21 is in the Republic of Korea: Provided, That Articles 9 and 10 shall apply even in cases where the place of arbitration is not yet determined or is not in the Republic of Korea, and Articles 37 and 39 shall apply even in cases where the 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 referred to arbitration or may be referred to arbitration only according to provisions, other than those of this Act, nor those treaties which come into operation in the Republic of Korea.

Article 3 (Definitions)

The definitions of terms used in this Act shall be as follows: <Amended by Act No. 14176, May 29, 2016>

1. "Arbitration" means a procedure to settle a dispute over property rights or disputes based on non-property rights that the parties can resolve through a reconciliation, not by a judgment of a court, but by an award of an arbitrator;
2. "Arbitration agreement" means an agreement between the parties to settle by arbitration all or some disputes which have already arisen or might arise in the future in respect of defined legal relationships, whether contractual or not; and,

3. “Arbitral tribunal” means a sole arbitrator or a panel of arbitrators who conduct the arbitral proceedings and make an award.

Article 4 (Notice of Written Communication)

(1) Unless otherwise agreed by the parties, a written communication shall be delivered to the addressee in question personally.

(2) If a notice cannot be personally delivered as provided under paragraph (1), the written communication shall be deemed to have been notified to the addressee when it is duly delivered to the addressee’s domicile, place of business or mailing address.

(3) In applying paragraph (2), if the addressee’s domicile, place of business or mailing address cannot be found even after making a reasonable inquiry, a written communication shall be deemed to have been notified to the addressee when it is sent to his or her last-known domicile, place of business or mailing address by registered mail or any other postal service which provides a record of the delivery.

(4) The provisions of paragraphs (1) through (3) do 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 agreement between the parties concerning the arbitral proceedings has not been complied with and yet proceeds with the arbitration without stating his or her objection to such non-compliance without delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his or her right to object.

Article 6 (Court Intervention)

In matters governed by this Act, no court shall intervene except where so provided in this Act.

Article 7 (Competent Court)

(1) A district court or branch court (hereafter referred to as “court”) designated in the arbitration agreement shall have jurisdiction over matters prescribed in any of the following subparagraphs; failing such designation, the competent court of the place of arbitration shall have jurisdiction; if the place of arbitration has not yet been determined, the competent court of respondent’s domicile or place of business shall have jurisdiction; if respondent’s domicile or place of business is unknown, the competent court of the respondent’s place of abode shall have jurisdiction; and, even if the respondent’s place of abode is not known, the competent court of the respondent’s last-known domicile or place of business shall have jurisdiction: *<Amended by Act No. 14176, May 29, 2016>*

1. Appointment of arbitrators and designation of an arbitral institution under Article 12 (3) and (4);
2. Court’s decision on a request for challenging an arbitrator under Article 14 (3);
3. Court’s decision on a request for terminating the mandate of an arbitrator under Article 15 (2);

4. Court's examination on the authority of the arbitral tribunal at the request under Article 17 (6);
 - 4-2. Recognition of an interim measure or a decision rendered by a court on an application for recognition or execution of an interim measure under Article 18-7 and an order to provide an asset as security;
 5. Court's decision on a request for challenging an expert under Article 27 (3).
- (2) The investigation of evidence under Article 28 shall be governed by the competent court having jurisdiction over an area where such investigation is performed.
- (3) The court designated by arbitration agreement shall have jurisdiction over the matters prescribed in any of the following subparagraphs, and the court having jurisdiction over the place of arbitration shall do so, if not designated by arbitration agreement:
1. Retention of the original copy of an arbitral award under Article 32 (4);
 2. Action for setting aside an arbitral award to court under Article 36 (1).
- (4) An application for the recognition and execution of an arbitral award under Articles 37 through 39 shall be governed by a court falling under any of the following subparagraphs:
1. Court designated by arbitration agreement;
 2. Court which has jurisdiction over the place of arbitration;
 3. Court which has jurisdiction over the place where a respondent's property is located;
 4. Court which has jurisdiction over a respondent's domicile or place of business, his or her place of abode if none of those can be found, or his or her last-known domicile or place of business if his or her place of abode cannot be found.

CHAPTER II ARBITRATION AGREEMENT

Article 8 (Form of Arbitration Agreement)

- (1) Arbitration agreement may be in the form of a separate agreement or in the form of an arbitration clause in a contract.
- (2) Arbitration agreement shall be in writing.
- (3) In any of the following cases, a written arbitration agreement shall be deemed made: *<Amended by Act No. 14176, May 29, 2016>*
 1. Where terms and conditions of an arbitration agreement have been recorded, regardless of whether such agreement was made orally, by conduct, or by any other means;
 2. Where parties' intentions communicated by telegram, telex, facsimile, electronic mail, or any other means of communication contain an arbitration agreement: Provided, That the cases where terms and conditions of such arbitration agreement are not verifiable shall be excluded herefrom;
 3. Where either party asserts that an application or a written answer exchanged between the parties contains an arbitration agreement, and the other party does not deny such assertion.

(4) Where a contract cites a document containing an arbitration clause, an arbitration agreement shall be deemed to exist: Provided, That this shall apply only where such arbitration clause constitutes part of the contract. <Amended by Act No. 14176, May 29, 2016>

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 dismiss the action when the defendant raises as a defense the existence of an arbitration agreement: Provided, That this shall not apply in cases where it finds that such arbitration agreement is null and void, inoperative or incapable of being performed.

(2) The defendant shall raise a defense under paragraph (1) by not later than when submitting his or her 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 arbitration agreement may request, before the commencement of or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III ARBITRAL TRIBUNAL

Article 11 (Number of Arbitrators)

(1) The parties are free to determine the number of arbitrators by agreement.

(2) Failing such agreement under paragraph (1), the number of arbitrators shall be three.

Article 12 (Appointment of Arbitrators)

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

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

(3) Failing such agreement under paragraph (2), arbitrators shall be appointed according to one of the following subparagraphs: <Amended by Act No. 14176, May 29, 2016>

1. In an arbitration with a sole arbitrator: If the parties fail to reach an agreement on the appointment of an arbitrator within thirty days of receipt of a request to do so from the other party, the arbitrator shall be appointed, upon request of a party, by the court or arbitration institution designated 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 by mutual agreement. 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 appoint the third arbitrator within thirty days of their appointment, the appointment shall be

made, upon request of a party, by the court or arbitration institution designated by the court.

(4) In any of the following cases, arbitrators shall be appointed by a court or the arbitration institution designated by a court upon a request from the parties, if an agreement has been made by the parties under paragraph (2): *<Amended by Act No. 14176, May 29, 2016>*

1. A party fails to appoint an arbitrator pursuant to the agreed procedure;
2. The parties, or two arbitrators, fail to appoint an arbitrator pursuant to the agreed procedure; or,
3. An institution or any other party, entrusted to appoint an arbitrator, fails to do so.

(5) No protest may be made against a decision by a court or by the arbitration institution designated by a court under paragraph (3) or (4). *<Amended by Act No. 14176, May 29, 2016>*

Article 13 (Grounds for Challenge)

(1) When a person is approached in connection with his or her possible appointment as an arbitrator or has been appointed as such, he or she shall without delay disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence to the parties.

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

Article 14 (Procedures for Challenge)

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

(2) Failing such agreement under 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 under Article 13 (2), send a written statement of the reason for the challenge to the arbitral tribunal. In such cases, unless the challenged arbitrator withdraws from 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. In such cases, the arbitral tribunal may, even if such request is pending in court, continue arbitral proceedings or make an award.

(4) A decision on the challenge by paragraph (3) entrusted to the court shall be subject to no appeal.

Article 15 (Termination of Mandate of Arbitrator Due to His or Her Failure to Act)

(1) If an arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay, his or her mandate terminates if he or she withdraws from his or her 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 on the termination of the mandate under paragraph (2) entrusted to the court 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 procedures 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 clauses of the contract.
- (2) A plea concerning the arbitral tribunal's jurisdiction shall be raised not later than the submission of the statement of defense. In such cases, a party shall not be precluded from raising such a plea by the fact that he or she 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 makes a decision on its jurisdiction as a preliminary question under paragraph (5), the party who objects to the decision may file a petition with a court to examine the jurisdiction of the arbitral tribunal, within thirty days after the party is notified of the decision. *<Amended by Act No. 14176, May 29, 2016>*
- (7) While a request under paragraph (6) is pending, the arbitral tribunal may continue the arbitral proceedings or make an arbitral award.
- (8) No appeal shall be filed against the review of the authority which is conducted by a court following a request therefor under paragraph (6).
- (9) If the court makes a decision that an arbitral tribunal has jurisdiction to make an award, upon receipt of a petition under paragraph (6), the arbitral tribunal shall continue the arbitral proceeding; but the arbitrators shall cease to have jurisdiction, if they are unable to, or do not want to, continue the arbitral proceeding, and arbitrators shall be appointed again under Article 16. *<Newly Inserted by Act No. 14176, May 29, 2016>*

CHAPTER III-2 INTERIM MEASURES

Article 18 (Interim Measures)

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures as considered necessary. <Amended by Act No. 14176, May 29, 2016>

(2) An interim measure under paragraph (1) is any temporary measure, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to perform any of the following subparagraphs: <Amended by Act No. 14176, May 29, 2016>

1. Maintain or restore the status quo pending determination of the dispute;
2. Take action that would prevent current or imminent harm or prejudice to the arbitral proceeding itself, or prohibiting action that may cause such harm or prejudice;
3. Provide a means of preserving assets subject to the execution of an arbitral award; or,
4. Preserve evidence that may be relevant and material to the resolution of the dispute.

Article 18-2 (Conditions for Granting Interim Measures)

(1) The party requesting an interim measure under Article 18 (2) 1 through 3 shall satisfy all of conditions in the following subparagraphs:

1. If the applicant fails to have the interim measure taken, the applicant will possibly sustain damage that cannot be redressed by an arbitral award for compensating for damage, and such damage will considerably exceed the damage that the other party is expected to sustain as a consequence of the interim measure;
2. There is a reasonable possibility that the requesting party will succeed on the merits of the claim: Provided, That the determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under Article 18 (2) 4, the requirements in paragraph (1) shall apply only to the extent the arbitral tribunal considers appropriate.

Article 18-3 (Modification, Suspension, Termination of Interim Measures)

The arbitral tribunal may modify, suspend or terminate an interim measure it has already granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative. In such case, the arbitral tribunal shall examine the parties before the modifying, suspending or terminating the interim measure.

Article 18-4 (Provision of Security)

The arbitral tribunal may require the party requesting an interim measure to provide appropriate security.

Article 18-5 (Disclosure)

The arbitral tribunal may require any party to promptly disclose any material change in the circumstances of the interim measure or on the basis of which the measure was requested.

Article 18-6 (Costs and Damages)

(1) The party requesting an interim measure shall be liable to pay or compensate for the costs and damages caused by the interim measure to the other party if the arbitral tribunal later determines that, in the circumstances, the interim measure was unjustified.

(2) The arbitral tribunal may issue an order, in the form of an arbitral award, for the payment of costs or the compensation for damage under paragraph (1) at any time during the arbitral proceeding.

Article 18-7 (Recognition and Enforcement of Interim Measures)

(1) The party who wishes to obtain recognition of an interim measure issued by an arbitral tribunal may file a petition with a court to seek a decision to approve the measure, and the party who intends to seek compulsory execution on the basis of the interim measure may file a petition with a court to seek a decision that authorizes the execution.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) The court where recognition or enforcement of an interim measure is sought may, if it considers it necessary, order the requesting party to provide appropriate security if the arbitral tribunal has yet to make such an order with respect to the interim measure or where such a decision is necessary to protect the rights of third parties.

(4) The provisions concerning preservative measures in the Civil Execution Act shall apply mutatis mutandis to the execution of interim measures.

Article 18-8 (Grounds for Refusing Recognition or Enforcement)

(1) Recognition or enforcement of an interim measure may be refused only if it falls under one of the following subparagraphs:

1. At the request of the party against whom the interim measure is invoked if the court is satisfied that:
 - (a) The other party to the interim measure proves any of the following facts:
 - (b) Where an asset has not been provided as security for the interim measure according to an order issued by the court or the arbitral tribunal;
 - (c) Where the interim measure has been terminated or suspended by the arbitral tribunal.
2. Where the court, ex officio, finds that either of the following grounds exists:
 - (a) Where the court has no authority to execute the interim measure: Provided, That the foregoing shall not apply where the court makes a decision to alter the interim measure to the necessary extent, without altering the substance of the interim measure, in order to execute the interim measure;

(b) Where any of the grounds set forth in Article 36 (2) 2 (a) or (b) exists.

(2) No court shall examine the substance of an interim measure when it makes a decision on a petition filed to seek the recognition or execution of the interim measure under Article 18-7.

(3) The judgment of a court based on any of the grounds referred to in paragraph (1) shall be valid only for the decision on the recognition and execution of the relevant interim measure.

CHAPTER IV ARBITRAL PROCEEDINGS

Article 19 (Equal Treatment of Parties)

The parties shall be treated equally in the arbitral proceedings and each party shall be given a full opportunity to present his or her case.

Article 20 (Arbitral Proceedings)

(1) Except those contrary 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. In such cases, the power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance and weight of any evidence.

Article 21 (Place of Arbitration)

(1) The place of arbitration shall be decided freely by agreement of the parties.

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

(3) Notwithstanding the provisions of paragraphs (1) and (2), the arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for examinations of witnesses, experts or the parties, or for inspection of goods, other property or documents: Provided, That the foregoing shall not apply where the parties agree otherwise. <Amended by Act No. 14176, May 29, 2016>

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 arbitration for that dispute 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 language or languages to be used in the arbitral proceedings shall be decided freely by the agreement of the parties. Failing such agreement, the arbitral tribunal shall determine such language or languages, and otherwise the Korean language shall be used.

(2) The language or languages referred to in paragraph (1), unless otherwise specified therein, shall apply to any written statement by a party, any oral 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 Defense)

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall communicate the statement of the facts supporting his or her claim, and the respondent shall state his or her defense in respect of these particulars.

(2) The parties may submit with their statements of claim or defense they consider to be relevant or may indicate a reference to evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his or her claim or defense during the course of the arbitral proceedings: Provided, That this shall not apply where the arbitral tribunal considers that such amendment or supplement might cause a considerable delay in the 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: Provided, That unless the parties have agreed that no oral hearings shall be held, the arbitral tribunal shall hold oral hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The arbitral tribunal shall provide the parties sufficient advance notice of any oral hearing or evidence-taking meetings before any oral hearing and evidence-taking occurs.

(3) All statements, documents or other materials submitted to the arbitral tribunal by one party shall be provided to the other party, without delay. *<Amended by Act No. 14176, May 29, 2016>*

(4) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be provided to the parties. *<Amended by Act No. 14176, May 29, 2016>*

Article 26 (Default of a Party)

(1) If the claimant fails to submit his or her statement of claim in accordance with Article 24 (1), the arbitral tribunal shall terminate the arbitral proceedings.

(2) If the respondent fails to submit his or her statement of defense in accordance with Article 24 (1), the arbitral tribunal shall continue the proceedings without treating such failure 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 submitted 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 any sufficient ground exists.

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. For this purpose, the arbitral tribunal may require a party to provide the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his or her inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the arbitral tribunal may require the expert to participate in the oral hearing to answer questions asked by the parties.

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

Article 28 (Court Assistance in Taking Evidence)

(1) The arbitral tribunal may, ex officio or upon the request of a party, request a court to take evidence or request for the court's assistance in taking evidence. <Amended by Act No. 14176, May 29, 2016>

(2) When an arbitral tribunal requests a court to take evidence, the arbitral tribunal may specify, in writing, the matters to be recorded in the evidence examination reports and other particulars required in the evidence-taking. <Amended by Act No. 14176, May 29, 2016>

(3) When a court takes evidence according to paragraph (2), the arbitrator or parties may participate in taking evidence with the permission of the presiding judge. <Amended by Act No. 14176, May 29, 2016>

(4) In the case of paragraph 2, the court shall, without delay after taking evidence, send to the arbitral tribunal the records on taking evidence such as a certified copy of reports on the examination of witnesses or a certified copy of reports on the examination of evidence. <Amended by Act No. 14176, May 29, 2016>

(5) When the arbitral tribunal requests a court to cooperate in taking evidence, the court may order such persons as a witness or document holder to appear before the arbitral tribunal or order them to submit necessary documents to the arbitral tribunal. <Newly Inserted by Act No. 14176, May 29, 2016>

(6) The arbitral tribunal shall pay expenses incurred in taking evidence to the court. <Newly Inserted by Act No. 14176, May 29, 2016>

CHAPTER V MAKING OF ARBITRAL AWARDS

Article 29 (Rules Applicable to Substance of Dispute)

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules chosen by the parties. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as referring to the substantive law of that State and not to its conflict of laws.
- (2) Failing the designation referred to in paragraph (1), the arbitral tribunal shall apply the law of the State which it considers having the closest connection with the subject-matter of the dispute.
- (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, any decision of the arbitral tribunal consisting of at least three arbitrators, shall be made by the resolution of a majority of all its members: Provided, That, arbitral procedure may be solely decided by the 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. In such cases, if requested by the parties, the arbitral tribunal may, record the settlement in the form of an arbitral award on agreed terms.
- (2) All arbitral award on agreed terms under paragraph (1) shall be made in accordance with Article 32 and shall state that it is an award.
- (3) The arbitral award on agreed terms shall have the same effect as any other award on the merits of the case.

Article 32 (Form and Contents of Arbitral Award)

- (1) Each arbitral award shall be made in writing and shall be signed by all arbitrators: Provided, That, if some of the arbitrators, whose number does not constitute a majority of the arbitral tribunal consisting of not less than three arbitrators, other arbitrators shall state the reasons therefor and sign on it.
- (2) The award shall state the reasons upon which it is based: Provided, That it shall not apply if the parties have agreed or the award is an arbitral award on agreed terms under Article 31.
- (3) The award shall state its date and the place of arbitration. The award shall be deemed to have been made on that date and at that place.
- (4) The authentic copy of the arbitral award made and signed in accordance with the provision in paragraphs (1) through (3) shall be delivered to each party in accordance with the provision in Article 4

(1) through (3): Provided, That the arbitral tribunal may deliver the original copy of the arbitral award to the competent court, along with a document certifying such delivery, upon the request of the parties, so as to deposit it with the court. <Amended by Act No. 14176, May 29, 2016>

Article 33 (Termination of Proceedings)

(1) The arbitral proceedings shall be terminated by the final award or by a decision of the arbitral tribunal in accordance with paragraph (2).

(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 or her claim: Provided, That it shall be excepted, if the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his or her 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 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 authentic copy of the arbitral award, unless another period of time has been agreed upon by the parties, a party may request a correction, interpretation or additional award from the arbitral tribunal under any of the following:

1. To correct any errors in computation, any clerical or typographical errors or any errors of similar nature;
2. To give an interpretation of a part or specific point 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: Provided, That this shall not apply if agreement between the parties exists.

(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 paragraph (1) 1 or 2 and within sixty days of the receipt of the request under paragraph (1) 3 respectively. In such cases, the interpretation under paragraph (1) 2 shall form part of the award.

(4) The arbitral tribunal may, ex officio, make a correction under paragraph (1) 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.

Article 34-2 (Allocation of Arbitration Costs)

Unless otherwise agreed by the parties, the arbitral tribunal may determine the allocation of costs of arbitration incurred in the arbitral proceedings, considering all circumstances of the relevant arbitration case.

Article 34-3 (Past Due Interest)

Unless otherwise agreed by the parties, the arbitral tribunal may order either party to pay past due interest, if it finds it appropriate in making an arbitral award, considering all circumstances of the relevant arbitration case.

CHAPTER VI EFFECT OF ARBITRAL AWARDS AND RECOURSE THEREAGAINST

Article 35 (Effect of Arbitral Award)

An arbitral award shall have the same effect on the parties as the final and conclusive judgment of the court: Provided, That it shall not apply where the recognition and enforcement has been denied under Article 38. *<Amended by Act No. 14176, May 29, 2016>*

Article 36 (Action for Setting Aside Award)

(1) Recourse to a court against an arbitral award may be made only by an action for setting aside the arbitral award.

(2) An arbitration award may be set aside by the court only if it falls under one of the following subparagraphs: *<Amended by Act No. 14176, May 29, 2016>*

1. The party seeking the setting aside of the award furnishes proof that it falls under one of the following items:

- (a) A party to the arbitration agreement was under some incapacity under the law applicable to him or her, 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;
- (b) The party making the action for setting aside 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 or her case;
- (c) The arbitral award deals with a dispute not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration: Provided, That 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 was not in accordance with the agreement of the parties, which was not in conflict with a mandatory provision of this Act, or, failing such agreement, was not in accordance with this Act;

2. The court finds on its own initiative that the arbitral award falls under one of the following items:

(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 award is in conflict with the good morals and other forms of social order of the Republic of Korea.

(3) An action for setting aside the arbitral award shall be made within three months from the date on which the party making such application had received the authentic copy of the arbitral award or, if a request had been made under Article 34, had received the authentic copy of a correction or interpretation or an additional award.

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

<Amended by Act No. 14176, May 29, 2016>

CHAPTER VII RECOGNITION OR ENFORCEMENT OF ARBITRAL AWARDS

Article 37 (Recognition or Enforcement of Arbitral Award)

(1) An arbitral award shall be recognized unless a ground to deny recognition under Article 38 or 39 exists: Provided, That, upon the request of the parties, a court may make a decision to recognize the arbitral award. *<Amended by Act No. 14176, May 29, 2016>*

(2) An arbitral award may be enforced only by a court's decision to enforce it upon the request of the parties. *<Newly Inserted by Act No. 14176, May 29, 2016>*

(3) The party requesting the recognition or enforcement of an arbitral award shall submit an authentic copy or a plain copy of the arbitral award: Provided, That if the arbitral award is made in a foreign language, it shall be accompanied by a translation in Korean. *<Amended by Act No. 14176, May 29, 2016>*

1. and 2. Deleted. *<by Act No. 14176, May 29, 2016>*

(4) In the case of a request under the proviso to paragraph (1) or paragraph (2), the court sets a pleading date or examination date, when both parties can participate, and notifies it to the parties. *<Newly Inserted by Act No. 14176, May 29, 2016>*

(5) A decision rendered under the proviso to paragraph (1) or paragraph (2) shall state its reasons: Provided, That if no oral arguments occurred, then a summary of the reasons may be stated. *<Newly Inserted by Act No. 14176, May 29, 2016>*

(6) Either party may file an immediate complaint against the decision rendered under the proviso to paragraph (1) or paragraph (2). *<Newly Inserted by Act No. 14176, May 29, 2016>*

(7) An immediate complaint under paragraph (6) does not have effect to suspend the enforcement: Provided, That if the appellate court (this refers to court of first instance, if the trial record remains at the court of first instance) may order the provision of security until a decision on the immediate appeal is reached or may order that security not be provided and suspend the enforcement of the court of first instance or suspend all or part of the enforcement proceedings, or may order the provision of security and the continuation of the enforcement. <Newly Inserted by Act No. 14176, May 29, 2016>

(8) No protest may be made against a decision rendered under the proviso to paragraph (7). <Newly Inserted by Act No. 14176, May 29, 2016>

Article 38 (Domestic Arbitral Awards)

An arbitral award rendered in the Republic of Korea shall be recognized or enforced, unless any of the following grounds exists: <Amended by Act No. 14176, May 29, 2016>

1. A party to an arbitral award furnishes facts that it falls under one of the following items:
 - (a) The fact that it falls under one of the items under Article 36 (2) 1; or,
 - (b) The fact that it falls under one of the following:
2. Where the case falls under Article 36 (2) 2.

Article 39 (Foreign Awards)

(1) Recognition and enforcement of foreign arbitral awards subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards shall be governed by the Convention.

(2) Recognition and enforcement of foreign arbitral awards that are not subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards shall apply mutatis mutandis to Article 217 of the Civil Procedure Act and Articles 26 (1) and 27 of the Civil Execution Act.

CHAPTER VIII SUPPLEMENTARY PROVISIONS

Article 40 (Assistance to Commercial Arbitration Institution)

In order to ensure the impartial and rapid settlement of domestic or international commercial disputes and to establish the international transaction order pursuant to this Act, the Government may fully or partially subsidize an incorporated association designated by the Minister of Trade, Industry and Energy as one that conducts commercial arbitration for necessary expenses. <Amended by Act No. 11690, Mar. 23, 2013>

Article 41 (Enactment and Approval of Arbitration Rules)

If an incorporated association designated as a commercial arbitration institution under Article 40 enacts or amends its arbitration rules, it shall obtain approval by the Chief Justice of the Supreme Court.

ADDENDA

- (1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.
- (2) (Transitional Measures concerning Arbitration Cases in Process) Cases for which arbitral proceedings are in progress before this Act enters into force shall be governed by the former provisions.
- (3) (Transitional Measures Arising out of Designation of Commercial Arbitration Institution) The "Korean Commercial Arbitration Board, Incorporated Association" as at the time this Act enters into force, shall be deemed to have been designated as an incorporated association conducting commercial arbitration under the amended provisions of Article 40, and its commercial arbitration rules shall be deemed to have been approved by the Chief Justice of the Supreme Court under the amended provisions of Article 41.

ADDENDA <Act No. 6465, Apr. 7, 2001>

- (1) (Enforcement Date) This Act shall enter into force on July 1, 2001.
- (2) through (4) Omitted.

ADDENDA <Act No. 6626, Jan. 26, 2002>

Article 1 (Enforcement Date)

This Act shall enter into force on July 1, 2002.

Articles 2 through 4 Omitted.

ADDENDUM <Act No. 10207, Mar. 31, 2010>

This Act shall enter into force on the date of its promulgation.

ADDENDA <Act No. 11690, Mar. 23, 2013>

Article 1 (Enforcement Date)

- (1) This Act shall enter into force on the date of its promulgation.
- (2) Omitted.

Articles 2 through 7 Omitted.

ADDENDA <Act No. 14176, May 29, 2016>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Article 2 (Transitional Measures concerning Cases Pending in Arbitral Proceedings)

The form of arbitration agreement, appointment of arbitrators, recourse against an arbitral tribunal's ruling on its jurisdiction, interim measures and request to assist in taking evidence in arbitral proceedings being conducted at the time this Act enters into force shall be subject to previous provisions despite the amended provisions in Articles 7, 8, 12, 17, 18, 18, 18-2 through 18-8, and 28.

Last updated : 2019-10-28

