



# The Asia-Pacific Arbitration Review

2025

**Mediation: South Korean perspectives**

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# Mediation: South Korean perspectives

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## Summary

IN SUMMARY

DISCUSSION POINTS

REFERENCED IN THIS ARTICLE

MEDIATION ON THE GLOBAL RISE

MEDIATION IN SOUTH KOREA

RECAP OF THE DEVELOPMENT OF PRIVATE MEDIATION IN SOUTH KOREA

KCAB INTERNATIONAL MEDIATION RULES: AN OVERVIEW

COMMENCEMENT OF MEDIATION

## IN SUMMARY

This article outlines the current state of mediation in South Korea, and touches upon the history of mediation in the country and globally.

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## DISCUSSION POINTS

- Mediation on the global rise
  - Mediation in South Korea
  - Recap of the development of private mediations in South Korea
- 

## REFERENCED IN THIS ARTICLE

- Singapore Convention
  - EU Mediation Directive
  - KCAB International Mediation Rules
  - SIMC Mediation Rules
  - ICC Mediation Rules
  - LCIA Mediation Rules
- 

## MEDIATION ON THE GLOBAL RISE

With the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention) opened for signature in 2019, we have witnessed an accelerated global rise in negotiations between parties in disputes facilitated by a mediator (ie, mediation).

Prior to the Singapore Convention, Directive 2008/52 of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters (the EU Mediation Directive) was adopted to promote the amicable settlement of disputes and encourage mediation.<sup>[1]</sup> While the European Parliament recognised in 2018 that the EU Mediation Directive 'remains very far from reaching its stated goals of encouraging the use of mediation',<sup>[2]</sup> it appears that the Singapore Convention may have been more successful. Notably, as at 22 March 2024, 56 countries have signed and 14 countries have ratified the Singapore Convention.

As a result, mediation is now receiving increased attention as a viable alternative or supplement to the prevailing dominance of arbitration in the realm of dispute resolution. Many arbitral institutions have set out model med-arb or arb-med-arb provisions that are aimed at preserving parties' relationships and resolving disputes in an amicable manner.<sup>[3]</sup> This trend is not only prevalent in the commercial arbitration sphere, but also impacts the investor-state dispute settlement (ISDS).<sup>[4]</sup>

In retrospect, albeit traditionally considered more suitable in the domain of divorce or family matters, more and more stakeholders and practitioners are turning to mediation to resolve complex, high-stakes disputes. This shift is due to its collaborative, cost-effective, neutral

and confidential process. Mediation allows parties greater control over the outcome, with time and cost savings. It has proven particularly effective when the parties are engaged in a continuing business relationship because of its non-adversarial and flexible nature.

In South Korea, as detailed below, court-annexed mediation has been proven to help courts decrease caseloads and facilitate the efficient and amicable resolution of legal disputes between businesses. Historically in South Korea, private mediations conducted outside the court and international mediations have been the road less travelled. However, this changed following the recent successful mediation between US corporation FuelCell Energy, Inc and Korean corporation POSCO Energy Co, Ltd, which has been publicly disclosed.<sup>[5]</sup> This billion-dollar technology dispute, which unfolded across five ICC arbitrations and parallel litigation, was amicably settled through a successful Singapore International Mediation Centre (SIMC)<sup>[6]</sup> process conducted by mediator George Lim SC. With extensive coverage of this successful and high-stakes international mediation case, keen interests in mediation have been growing among in-house counsel as well as sophisticated clients.

## MEDIATION IN SOUTH KOREA

In South Korea, the mediation system includes both court-annexed mediation and a number of dispute resolution committees across various sectors. Private mediation, while essential and beneficial for efficiently resolving disputes without resorting to litigation, has historically been undervalued in comparison to these more institutional forms of mediation. General awareness of the mediation system among the public and legal professionals is low, with inadequate legislative and policy support compared to arbitration, resulting in minimal trust and engagement with private mediation. This contrasts with the situation in common law countries where numerous organisations, including the American Arbitration Association, JAMS, the Chartered Institute of Arbitrators, the Centre for Effective Dispute Resolution, the International Chamber of Commerce (ICC) ADR Centre and SIMC, offer both non-profit and profit-oriented private mediation services.

South Korean laws, including the Judicial Conciliation of Civil Disputes Act, do not define 'mediation' explicitly, unlike foreign laws and international treaties that clarify mediation's purpose and principles. For instance, the German Mediation Act describes it as 'a confidential and structured process in which the parties strive, on a voluntary basis and autonomously, to achieve an amicable resolution of their conflict with the assistance of one or more mediators'. The EU Mediation Directive and the Singapore Mediation Convention similarly define mediation as a structured process, initiated voluntarily by parties with a mediator's assistance, aimed at reaching an amicable settlement, emphasising the process's voluntary, party-centred nature.

## Differences Between Court-annexed And Private Mediation

In South Korea, both court-annexed and private mediation respect the autonomy of the parties, offering them the choice to engage in the mediation process and accept its outcomes. Despite their common respect for party autonomy, these two forms of mediation diverge significantly in their goals, execution, costs and the legal standing of their resolutions. Court-annexed mediation, led by legal professionals at predetermined times and places, aims for fair, timely and appropriate dispute resolution. It employs an evaluative approach to persuade parties, centring on mediators who may not necessarily have specialised training in mediation. This makes the process mediator-focused, often sidelining the parties from active problem-solving roles. The affordability of this option, costing just a fraction of litigation fees,

coupled with the minimal compensation received by mediators due to budget limitations, frames court-annexed mediation as largely voluntary. The outcomes of such mediation are equivalent to judicial reconciliations under the Civil Mediation Law.

Conversely, private mediation places parties at the centre of the process. It ensures their comprehensive involvement and decision-making autonomy, from selecting mediators and establishing procedures to crafting and implementing solutions. Neutral mediators facilitate tailored resolutions by understanding parties' needs, helping prioritise issues and fostering negotiations. This party-centric approach necessitates specific mediator training to navigate challenges and ensure mediation quality. While not exclusively reserved for legal professionals, mediators often come from specialised fields, enhancing the process's credibility. Private mediation entities maintain detailed protocols, mediator rosters and the necessary infrastructure, adhering to professional conduct standards such as the European Code of Conduct for Mediators. The cost of private mediation reflects various factors, including the organisation's services, mediator expertise and procedural duration, generally resulting in a perception of superior service quality compared to court-annexed options. Outcomes from private mediation are recognised as contractual agreements between the parties, underlining its effectiveness in facilitating amicable dispute resolutions.

## RECAP OF THE DEVELOPMENT OF PRIVATE MEDIATION IN SOUTH KOREA

As explained above, mediation in South Korea has been primarily focused on court-annexed mediations and private mediations tend to have been relatively undervalued (or, frankly speaking, disregarded). Except for article 52 of the Trade Union and Labour Relations Adjustment Act, there is no statutory provision that expressly permits or prohibits private mediation that shows the general lack of awareness of private mediations. Nonetheless, article 109 of the Attorney-at-Law Act creates a legal hurdle by penalising non-lawyers for engaging in legal services for compensation, affecting the private mediation process.

Although interest in mediation has been steadily rising among in-house counsel and sophisticated clients, the concept of private mediations remains largely unknown to the general public in Korea. However, this is changing. With the Singapore Convention in 2019, the Korean Ministry of Justice launched the Task Force on Domestic Legislation to Implement the Singapore Convention in 2021. This strategic move aims to provide the necessary legal framework to enforce settlement agreements resulting from mediation under the domestic rules and endorse international mediation as a faster and cost-efficient dispute resolution option.<sup>[7]</sup> Apart from the government support, South Korea's local arbitral institution, the Korean Commercial Arbitration Board (KCAB) has provided private mediation services for domestic cases for years. The KCAB and the Korea Society of Mediation Studies have also held regular educational programmes to train mediation experts. Separately, and in parallel with the KCAB, the Korea International Mediation Centre (KIMC) was established in September 2020 as a non-profit organisation registered at the Ministry of Trade and Industry to provide private mediation services for business partners and educational programmes under the auspices of the Singapore Convention.<sup>[8]</sup>

With the ongoing expansion of the Singapore Convention, the KCAB (specifically, the KCAB International) became an institutional partner to the SIMC<sup>[9]</sup> and has sought various opportunities to collaborate with the SIMC. In January 2024, in the spirit of supporting the dispute resolution through international mediations, the KCAB enacted and implemented the International Mediation Rules.<sup>[10]</sup> As will be further explained below, the KCAB International Mediation Rules seem to have incorporated the current international mediation practice

and the takeaways from the cases of other mediation institutions. The KCAB indicated that it would proceed with the appointment of a panel of international mediators with skills and experience and plans to pursue various projects to expand the international mediation systems by holding several training programmes on mediations.

### KCAB INTERNATIONAL MEDIATION RULES: AN OVERVIEW

The KCAB International Mediation Rules (the KCAB Rules) are newly introduced International Rules that came into effect from 1 January 2024. Consisting of 11 articles, the KCAB Rules set out applicable procedural rules for mediation administered by the KCAB, covering aspects such as the appointment of a mediator, the conduct of the mediation, termination of the mediation proceedings, settlement agreement and other related matters.

The KCAB Rules may not appear new to those familiar with the SIMC Mediation Rules (the SIMC Rules),<sup>[11]</sup> which also consist of 11 articles of a similar nature. Nevertheless, there are notable distinctions that require attention. Reportedly, since the establishment of SIMC in 2014, the SIMC Rules have been used not only by domestic parties but also in cases involving only foreign parties with no ties to Singapore.<sup>[12]</sup> Whether the KCAB Rules will appeal to foreign parties and whether they will stand the test of time are questions that remain to be answered. That said, this section aims to familiarise potential users of the KCAB Rules by focusing on significant differences with the SIMC Rules, as well as other international rules such as the ICC Mediation Rules (the ICC Rules)<sup>[13]</sup> and the London Court of International Arbitration (LCIA) Mediation Rules (the LCIA Rules).<sup>[14]</sup>

### COMMENCEMENT OF MEDIATION

As with the SIMC, ICC and LCIA Rules, the KCAB Rules differentiate between cases where there is a prior mediation agreement and no prior mediation agreement to mediate under the Rules. Where there is a prior mediation agreement between the parties to mediate under the KCAB Rules, any party or parties wishing to commence mediation are required to file a written request for mediation (article 2(1)), including the information required by the KCAB, namely, the contact details of the parties, nature of the dispute, preference for mediator and conduct of mediation (article 2(2)). Similarly, the SIMC Rules require information in the same nature as prescribed in the SIMC mediation request (article 2(1)). However, unlike the SIMC Rules, where the date of the SIMC's written acknowledgement of receipt of the request shall be deemed to be the date of commencement of mediation (article 3(2)), the KCAB Rules provide that the date on which the request is received by KCAB shall be deemed to be the date of the commencement of mediation (article 2(5)).

If there is no prior agreement to mediate, like the SIMC Rules, the KCAB Rules provide that upon receiving a party's request, the KCAB may assist the parties in considering the proposal to mediate (article 3(1)) and that the mediation 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 (article 3(3)). While the SIMC Rules do not impose a time limit for the other party receiving the request to agree to the mediation, notably, the KCAB, LCIA and the ICC Rules provide a strict time limit of 30 days, 14 days and 15 days, respectively, from the date of receipt of the request (article 3, article 2.4(ii) and article 3.4, respectively).

### Appointment Of Mediator

The KCAB Rules provide that the parties may jointly nominate a mediator or mediators. If the parties are unable to jointly nominate a mediator, the KCAB has the power to appoint a

mediator or mediators upon considering the prospective mediator(s)' attributes (article 5). This mirrors the SIMC Rules (article 4), perhaps with the only difference being the time limit for the parties to jointly nominate a mediator where the KCAB Rules (article 5(2)) provide 15 days and the SIMC Rules (article 4.2) provide 10 days from the date of commencement of the mediation.

### **Fees And Costs**

Unlike the SIMC Rules, the KCAB Rules set out the exact amount of a non-refundable filing fee and the applicable administrative expenses of the KCAB differing by the range of amount in dispute in Appendix A. This increases transparency and predictability for the potential users of the KCAB Rules as to fees and costs. In terms of the mediator's fees and expenses, the KCAB Rules state that the mediator's fees are to be on an hourly rate basis except any agreement otherwise between the parties and the mediator, and the amount of reasonable expenses of the mediator is to be fixed by the KCAB (Appendix A, article (3)).

### **Conduct Of Mediation**

Unlike the SIMC Rules, the KCAB Rules are less stringent in terms of the conduct of mediation. Whereas the SIMC Rules require parties' submission of the statements of cases and any relevant documents (article 6.4) and an advanced notification of attendance to the mediation (article 6.3), the KCAB Rules are silent on these requirements. In the absence of such similar Rules, the users of the KCAB Rules are afforded more flexibility to conduct the mediation as they see fit.

### **Confidentiality**

The SIMC Rules and the KCAB Rules on confidentiality are similar, except that the SIMC Rules provide added prohibition upon the mediator to not give testimony in any judicial, arbitration or similar proceedings concerning any aspect of the mediation, unless required by applicable law or an agreement in writing from the parties and the mediator (article 9.3) and require a signed undertaking of confidentiality from every person attending the mediation other than the parties and the mediator (article 9.4).

### **Termination Of The Mediation Process**

Unlike the SIMC Rules, the KCAB Rules provide two further bases for the KCAB to terminate the mediation – specifically, if there has been a delay in payment or if 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).

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### **Endnotes**

<sup>[1]</sup> Directive 2008/52 of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters, 2008 OJ (L 136). Also available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0052>.

<sup>[2]</sup> Giuseppe De Palo, 'A Ten-Year-Long "EU Mediation Paradox" When an EU Directive Needs to Be More...Directive'. Also available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL\\_BRI\(2018\)608847\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL_BRI(2018)608847_EN.pdf).

<sup>[3]</sup> See, for example, the [Singapore Arb-Med-Arb Clause](#), the [ICC Mediations Clauses](#) and the [LCIA Mediation Clauses](#).

<sup>[4]</sup> See, for example, the [IBA Rules for Investor-State Mediation](#), the [ICSID Mediation Rules](#), the [UNCITRAL Working Group III, draft provisions on mediation](#), and the [draft UNCITRAL guidelines on investment mediation](#).

<sup>[5]</sup> Global Arbitration Review, 'US-Korean fuel cell dispute settles', 6 January 2022, available at <https://globalarbitrationreview.com/article/us-korean-fuel-cell-dispute-settles>.

<sup>[6]</sup> The SIMC website, Our Institutional Partners, available at <https://simc.com.sg/our-institutional-partners>.

<sup>[7]</sup> Ministry of Justice, Press Release, 'MOJ Launches Task Force on Domestic Legislation to Implement Singapore Convention on Mediation', available at [https://viewer.moj.go.kr/skin/doc.html?rs=/result/bbs/49&fn=temp\\_1615944875024100](https://viewer.moj.go.kr/skin/doc.html?rs=/result/bbs/49&fn=temp_1615944875024100).

<sup>[8]</sup> The KIMC website, Mediating through KIMC, available at <https://kimc.seoul.kr/Mediating-through-KIMC>.

<sup>[9]</sup> The SIMC website, Our Institutional Partners, available at <https://simc.com.sg/our-institutional-partners>.

<sup>[10]</sup> The KCAB International Mediation Rules, in force as from 1 January 2024. Available at [http://www.kcabinternational.or.kr/common/index.do?jpath=/contents/sub020107&CURRENT\\_MENU\\_CODE=MENU0118&TOP\\_MENU\\_CODE=MENU0007](http://www.kcabinternational.or.kr/common/index.do?jpath=/contents/sub020107&CURRENT_MENU_CODE=MENU0118&TOP_MENU_CODE=MENU0007).

<sup>[11]</sup> The SIMC Mediation Rules. Available at <https://simc.com.sg/simc-mediation-rules>.

<sup>[12]</sup> Eileen Ang, 'SIMC shows growth a year after opening', (23 March 2016). Available at <https://www.legalbusinessonline.com/news/simc-shows-growth-year-after-opening/71949>.

<sup>[13]</sup> The ICC Mediation Rules, in force as from 2014. Available at <https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/arbitration-rules-and-mediation-rules/>.

<sup>[14]</sup> The LCIA Mediation Rules, in force as from 1 October 2020. Available at [https://www.lcia.org/Dispute\\_Resolution\\_Services/lcia\\_mediation\\_rules\\_2020.aspx](https://www.lcia.org/Dispute_Resolution_Services/lcia_mediation_rules_2020.aspx).



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