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Alternative Dispute Resolution Systems in Korea

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Abstract

Ⅰ. Background and Purpose

□ Development of society and complexity of disputes

○ As the society develops, disputes have been continuously arising.

○ It is necessary to resolve disputes that have already arisen in a speedy and efficient manner at a low cost.

○ The resolution of disputes is essential to the development and unity of the society.

□ Complex disputes

○ Complex disputes that involve people at large, such as environmental disputes and disputes over product liability.

○ It is impracticable to resolve disputes only within the framework of the existing judicial system.

□ Rapidly advanced democracy

○ The issue of conflicts arose in the late 1980s when democracy was rapidly advanced.

○ Conflicts have arisen in various sectors, including ideology, environment, labor relations, classes, and regions.

○ Conflicts have imposed an enormous burden of social and economic coast

Ⅱ. Main Contents

□ ADR in Korea

○ Parties to a conflict can actively participate in the proceedings of resolving the conflict, compared with litigation.

○ Parties to a conflict can take part in the whole process of resolving the conflict.

○ It is quicker and cheaper than litigation and appropriate for draw various conclusions to satisfy the interest of the parties involved.

□ Typical administrative ADR under the dispute mediation system in Korea

○ The system can be classified into judicial ADR, administrative ADR, and private ADR according to the responsible organization or institution.

○ Most of administrative ADR schemes in Korea are based on a respective law.

○ In general, mediators are appointed or commissioned by the head of the competent administrative agency, mainly from among persons who have knowledge and experience in the relevant sector from legal circles, academia, the group of public officials, etc.

○ Even in administrative ADR schemes, mediation, intercession, and adjudication are included, but mediation has been used most frequently.

○ This paper aims to help people access details of the dispute resolution system in Korea in a easier way by looking into exemplary cases of ADR schemes.

Ⅲ. Expected results

□ This paper in which dispute mediation schemes in Korea are categorized in a taxonomic way can be utilized as a material that increases the understanding of the dispute resolution system in Korea.

Key Words: South Korea, Alternative Dispute Resolution, Compromise, Intercession, Mediation, Arbitration, Dispute Mediation System, Judicial ADR, Administrative ADR, Private ADR

CONTENTS

CHAPTER Ⅰ Introduction

There are many ways to settle a dispute. The most traditional way is through litigation, but there are extrajudicial dispute resolution proceedings or alternative dispute resolution proceedings, by which dispute can be settled without resorting to litigation.

As the society becomes advanced and diversified, people become aware that it is an essential element for the development and unity of the society to prevent disputes and resolve disputes that have already arisen in a prompt, inexpensive, and efficiently manner.[1)]

In cases of a complex dispute in which a large number of people are involved in a complex modern society, such as an environmental dispute or a dispute over product liability, it is inevitable to try various types of dispute resolution in the form of ADR because it is actually almost impossible to settle such dispute within a conventional framework.[2)]

Cases in the Republic of Korea are no exception. Since the late 1980s when Korean society began to democratize rapidly, conflicts arose in various aspects, such as in the environment, labor or relations, among social strata, and in regionalism, and created an enormous amount of economic burden on Korean society.[3)]

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1) Shin Dong-won, "A Study on ADR in the United States of America - Focused on ADR by Administrative Agencies," The Collection of Treatises of Prosecutors Trained Abroad, Volume 27, 2012, p. 250.

2) The Industry-Academia Partnership of the Ministry of Justice and Chung-Ang University, "The Direction in Enactment of the Framework Act on ADR and a Scheme for Rational Operation of Current ADR Agencies," 2015 Report on Research Services commissioned by the Ministry of Justice, p. 2.

3) Shim Jun-seop, "Comparative Analysis of Domestic Administrative ADR Agencies," Research on Coexistence and Cooperation, Volume I, Issue 1, 2012, p. 40.

In Korea, the index of social conflicts is rather high, the expenditure of economic cost incurred by conflicts or disputes is huge, and the society is in a state of excessive conflicts in every aspect, politically, economically, socially, and culturally. Diversifying the functionality of dispute resolution agencies to various extrajudicial agencies is the need of the times and the need of the country in order to lower the cost of dispute resolution and alleviate social disputes.

Because of the complexity and intricacy of disputes in today's world, mediation has emerged as a prominent solution for disputes.

In Korea, mediation committees and commissions began to intervene in disputes through mediation in 1980s as organizations affiliated with the Executive, and approximately 50 organizations are currently in service for dispute resolution, among which are the Committee for Equal Opportunity for Employment, the Financial Dispute Mediation Committee, the Consumer Dispute Mediation Commission, the Press Arbitration Commission, Medical Service Review and Mediation Committee, the Korea Copyright Commission, the Korea Communications Commission, the Program Deliberation and Mediation Committee, and the Environmental Dispute Adjustment Commission. These administrative mediation agencies adopted various forms of ADR proceedings, including intercession, adjudication, and arbitration, in addition to mediation, and such procedures have various effects, equivalent to judicial compromise or compromise under the Civil Act.

Since 1990, when the Judicial Conciliation of Civil Disputes Act was enacted, courts began to take interest in simple dispute resolution methods and to utilize such methods pro-actively under the initiative of the Supreme Court.

CHAPTER Ⅱ Definition and Types of ADR

Ⅰ. Relationship between Judicial System and ADR

Innumerable conflicts in every corner of our society, including conflicts in politics, in labor affairs, and between classes, have been continuously creating disputes. If it is intended to settle such conflicts or disputes between individuals or groups through litigation in courts for judicial remedies, citizens' burden of cost and time will significantly increase, and citizens' dissatisfaction and distrust of the judiciary will be deepened because of an excessive workload of courts and their lack of expertise. Under such circumstances, the concern about the alternative dispute resolution system (ADR) has been increasing as a measure for lessening the workload of courts and for saving costs and time for resolving disputes.

More specifically, mediation, a representative kind of ADR systems, has advantages in that it is appropriate for reaching various conclusions that satisfy interests of parties more quickly at a lower cost, compared with litigation, that the reputation or privacy of parties can be protected by closed proceedings, and that parties are more likely to be satisfied with the results therefrom and to voluntarily perform an agreement as they make such agreement on their own. In addition, mediation can relieve judges from the burden of litigation. Judges in every country are swamped with a heavy workload of litigation, but there is a limitation on budgeting for increasing the number of judges, and judges are forced to

handle many cases simultaneously. Eventually, the settlement of disputes through ADR can relieve judges from such a heavy burden of litigation.[4)]

Meanwhile, a feature of ADR, compared with judicial proceedings, is an impartial third party's authority who intervenes in a dispute between parties in order to resolve the dispute. While judicial proceedings are the process of resolving a dispute by forcing the defendant to participate in the judicial proceedings without necessarily obtaining consent from the defendant, it is a principle that ADR is a process of resolving a dispute by a third party who intervenes in the dispute under an agreement between parties. Differences between two systems include the following: Judicial proceedings are the exercise of state power, and forced enforcement of the procedure is justified by following substantive and procedural statutes; on the contrary, ADR is a process of resolving a dispute under an agreement made by parties voluntarily, and thus it is not required to follow state law. It is not necessary to restrict the cases subject to ADR to civil disputes, as long as it is possible to settle a case under an agreement between parties, and it does not need to be a dispute related to a legal right or obligation. Therefore, even in a dispute over an administrative action, it is not possible to deter the case from being resolved by ADR, if the relevant administrative authority can withdraw the administrative action in its discretion. It is also possible to resolve a dispute by ADR, if the parties agree to do so, even for a dispute that is not within the jurisdiction of a court because it is not eligible for a legal action.

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4) The Ministry of Justice, "A Study on the Role of Attorneys-at-Law for Promotion of ADR," The 2015 report on research service commissioned by the Ministry of Justice, p.p. 1-2.

Ⅱ. Definition of ADR

ADR is the acronym of Alternative Dispute Resolution and the concept that embraces all extensive dispute resolution means for resolving civil disputes without a judgment made through judicial proceedings.

ADR began to be utilized through movements for the reform of the legal system in the early 1970s in order to overcome high cost and low efficiency, which are limitations on the judicial system, and to pro-actively solve the problem of increasing lawsuits.[5)]

ADR is referred to by various names, such as dispute resolution proceedings alternative to litigation;[6)] dispute resolution systems as substitutes for litigation;[7)] alternative dispute resolution systems;[8)] alternative dispute resolution mechanisms;[9)] dispute resolution without court judgment;[10)] extrajudicial dispute resolution systems, procedures for settling disputes by any method other than litigation, non-litigious dispute resolution procedures; and dispute resolution systems as an alternative for litigation.

Although the purpose of ADR is to avoid litigation, it shows willingness to pro-actively resolve conflicts, rather than circumventing the state

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5) Kim Jeong-in, "A Study on Reclassification of Types of Administrative ADR Mechanisms," The Collection of Papers on Public Administration in Korea, Volume 27, Issue 3, 2015, p. 761.

6) Jeong Dong-yun and Yu Byeong-hyeon, "Civil Procedure," Beobmunsa, 2009, p. 17.

7) Lee Si-yun, "New Civil Procedure," Bakyeongsa, 2009, p. 15.

8) Jo Hong-sik, "Economics of Alternative Dispute Resolution (ADR)," The Comparative Law, Volume 13, Issue 1, p. 85.

9) Yu Byeong-hyeon, "The Direction in the Development of ADR in the Republic of Korea," Anam Law Journal, 2006, p. 293; Park Noh-hyeong, "A Study of Alternative Dispute Resolution Systems (ADR) in the European Union," 2008 Report on Research Services commissioned by the Ministry of Government Legislation, 2008.

10) The Judicial Research and Training Institute, "ADR (Resolution of Disputes without Court Judgment)," 2009, p. 1.

of affairs. Moreover, it is quite unofficial, compared with the judicial system, and has a form departing from formalized judgments. The most significant feature of ADR is that parties to a conflict can actively participate in resolving the conflict, get involved in the whole process of resolution of the conflict, and have the autonomy to make all decisions, compared with litigation. This means that ADR plays a role to enhance the autonomy of parties to a conflict to make decisions by themselves.[11)]

Ⅲ. Types of ADR

There are various types and forms of ADR, but the specific method and substance of each type of ADR has developed mostly in the United States of America. The various types of ADR were not created instantaneously. Rather, new types of ADR were created or developed through modification, refinement, etc. of existing systems, and all types and forms of ADR are unequally utilized even today.[12)]

In Korea, the number of disputes resolved by ADR, such as by compromise, intercession, mediation, and arbitration, has been increasing gradually, but the methods most frequently used are mediation and arbitration. ADR can be categorized into compromise, intercession, mediation, and arbitration as follows:

	Compromise	Intercession	Mediation	Arbitration
Meaning	A dispute resolution system in	A procedure through which personnel of	A system in which parties to a dispute	A system in which a dispute is

11) Kim Yeong-uk, “Settlement of Conflicts and Alternative Dispute Resolution,” Ewha Womans University Press, p. 41.

12) The Judicial Policy Research Institute of the Supreme Court of Korea, Ibid., p. 48.

	Compromise	Intercession	Mediation	Arbitration
	which parties to a dispute make an agreement to settle a dispute by a compromise, in lieu of litigation, which can be divided into judicial compromise and extrajudicial compromise	an arbitration board, who have experience and knowledge, intervene in a dispute arising in a domestic or international commercial transaction to help the parties to the dispute reach an amicable agreement, impartially without being biased to either party	can autonomously resolve the dispute according to the actual situation with the mediator's help based on logics through dialogue and mutual understanding between parties	definitely resolved by a decision of arbitrators, not by a court decision, where the parties to the dispute agree to resolve the dispute by arbitration
Features	Compromise by an agreement between parties, compromise by a compromise agreement under the Civil Act, a judicial compromise under the Civil Procedure Act (compromise	Amicable resolution by a third-party expert	Sufficient reflection of parties' opinions from the stage of commencement to the stage of agreement, speedy resolution, and protection of privacy or	An arbitration award has the same effect as a final judgment of a court, speedy dispute resolution, a low cost of arbitration

	Compromise	Intercession	Mediation	Arbitration
	prior to litigation, compromise in litigation)		confidential business information, a low cost of mediation	

1. Compromise

The most basic type of ADR is the settlement of a problem through negotiations between parties. Compromise is an approach to resolve a dispute mutually by the parties to the dispute through direct and independent negotiations without a third party's intervention. A settlement agreement is a bilateral contract, and issues of a dispute and the method of negotiation for the resolution of problems are determined autonomously by an agreement between the parties to the dispute.

In general, the process of settlement through ADR begins with negotiations in accordance with an agreement between parties; both parties' duty to observe such agreement becomes enforceable as at the time the parties reach the agreement on the result of negotiations. However, an agreement to start a process is often omitted in reality, and only the agreement on the results of negotiations is made in accordance with the requirements under contract law after negotiations are successfully concluded. Usually, an agreement made by and between individuals is in such form. A settlement agreement is recognized by contract law, and its validity is ensured by contract law. Judicial compromise, which includes pre-court settlement and compromise in litigation, becomes as binding as

a final judgment when a deed of compromise is issued, may be referred to in future judgments, and is enforceable by law. However, a compromise under private law concluded by contract is unenforceable, unlike a final judgment.

Furthermore, the results of a judicial compromise may be invalidated or amended by retrial; while the results of a compromise under private law may be invalidated if there is a defect in the standing of either party or if there is any error as to any matter other than matters concerning the dispute subject to compromise.[13)]

2. Intercession

Intercession means direct or indirect efforts to assist the parties to a dispute to reach an agreement or understanding by themselves to resolve the dispute through negotiation, facilitation, encouragement, brokerage, referral, inquiry, etc. However, the third party's role is very limited, and thus such efforts are confined to assistance to facilitate an agreement between the parties, rather than active recommendation or efforts to reach a specific agreement.[14)]

In Korea, methods of resolving disputes are divided into mediation and intercession. Although the statutes[15)] that provide for both processes do

13) Kim Yeong-uk, Ibid. pp. 335-338.

14) Kim Yeong-uk, Ibid. p. 335.

15) The Copyright Act, the Environmental Dispute Adjustment Act, etc. The Environmental Dispute Adjustment Act provides for separate procedures for intercession, mediation, and adjudication and uses the term 'medication' as a term that embraces intercession, mediation, and adjudication (subparagraph 3 of Article 2). Although neither the Copyright Act nor the Environmental Dispute Adjustment Act separately specifies the effect of an agreement made through the process of intercession, they grants the same effect as that of judicial compromise, to an agreement reached through mediation (Article 117 (2) of the Copyright Act, Article 33 (2) of the Environmental Dispute Adjustment Act).

not define ‘mediation’ and ‘intercession,’ intercession seems to be limited to facilitation of communications or assistance in reaching an agreement, while mediation seems to be a process that requires the mediator to play an active role, by investigating into facts, proposing terms and conditions of an agreement, etc.[16)]

3. Mediation

Mediation is a process that a third party, called mediator, uses to resolve a dispute by agreement. Some mediators meet with the parties together and attempt to resolve a dispute amicably, while other mediators meet with each party separately and convey information to promote amicable settlement. The purpose of mediation is to assist the parties to a dispute to reach an agreement voluntarily and making an agreement on terms and conditions the parties can perform. In general, mediation is a process for discussing primarily parties’ interests, rather than their rights.

In connection with specific methods or the mediator’s role, mediation is categorized into facilitative mediation, transformative mediation, evaluative mediation, and, sometimes, narrative mediation. Facilitative mediation is to provide an environment in which conflicting parties can attain mutually helpful resolution. In the process of facilitative mediation, the mediator searches for a scheme by which the parties to a dispute can resolve the dispute by themselves, while respecting the parties’ opinions. The important point here is that the mediator does not express his/her view on issues of the case nor propose any term or condition for an agreement.

16) The Judicial Policy Research Institute of the Supreme Court of Korea, Ibid. pp. 40-41.

Transformative mediation advances facilitative mediation further. In the process of transformative mediation, the emphasis is placed on moving from a negative relationship between the parties to a dispute, rather than specific terms and conditions for a proposed agreement, to a positive relationship through mutual understanding and recognition. It is regarded as important for the parties to a dispute to find a solution for the dispute through such process. On the contrary, the mediator in the process of evaluative mediation is required to play a more active role. The mediator is expected to examine the reasonableness of arguments of the parties to a dispute and issues in the case, express his/her opinions, and give advice. Narrative mediation is a recently introduced concept, and the mediator is expected to facilitate the creation of a new story helpful for resolution of a dispute at the moment the parties to a dispute enter into a deadlock in the course of negotiation, by telling a story related to the relevant case with a storytelling technique.[17)]

4. Arbitration

Arbitration is a process for resolving a dispute, where by an arbitrator selected by an agreement of the parties to the dispute, issues an arbitration award.[18)] Arbitration has the longest history among non-litigious methods of dispute resolution, so-called alternative dispute resolution systems, and is known as a basic alternative dispute resolution system.[19)] Arbitration is conducted privately, sometimes publicly, and participation in

17) The Judicial Policy Research Institute of the Supreme Court of Korea, Ibid. pp. 53-54.

18) Subparagraph 1 of Article 3 of the Arbitration Act.

19) Lee Ho-won, “A Study on Improvement of the Procedure for Execution of Arbitration Awards,” Law Research, Volume 23, Issue 1, 2013, p. 68.

the procedure may be voluntary or mandatory. Some arbitration awards are binding, while other arbitration awards are not. Arbitration can be divided into traditional arbitration and court-annexed arbitration. Furthermore, there is "final-offer arbitration" among types of private arbitration.[20]

20) The Judicial Policy Research Institute of the Supreme Court of Korea, Ibid. p. 49.

CHAPTER Ⅲ Alternative Dispute Resolution Systems in Korea

Ⅰ. Alternative Dispute Resolution Systems in Korea

1. Civil conciliation

Civil conciliation procedure is a system under which a judge in charge of mediation or a mediation committee established within a court hears arguments of the parties to a dispute, presents a proposed mediation agreement, considering circumstances, and assists the parties in reaching an agreement through mutual concession and compromise, to resolve the dispute amicably, simply, and promptly.

The first Act that introduced a civil conciliation system in Korea was the Act on Mediation in Lease or Rent of Land and Houses, which was enacted and entered force on January 15, 1962. This Act provides that a person may request mediation in a dispute arising regarding rent, rental charge, or lease deposit payable for leasing land (land leased for the purpose of owning a building or land subject to a right to lease on a deposit basis or superficies); or for renting a house (all or part of a building rented or subject to a right to lease on a deposit basis) or regarding any other dispute.

The Act on Mediation in Lease or Rent of Land and Houses was repealed later and the Judicial Conciliation of Civil Disputes Act was enacted and entered into force on September 1, 1990 by deleting

provisions concerning conciliation in the Act on Special Cases concerning the Settlement of Civil Disputes by Summary Proceedings[21] and the Trial of Small Claims Act[22] and incorporating such provisions of the Acts into the new legislation. The Judicial Conciliation of Civil Disputes Act was newly enacted for conciliation of civil disputes by consolidating and amending statutes concerning conciliation of civil disputes as an effort to implement a legal system for benefits of citizens, so that civil disputes can be solved through a simple procedure that suits actual conditions.

Contrary to the purpose of enactment of the Judicial Conciliation of Civil Disputes Act, the number of civil lawsuits on the merits increased after the Act entered into force; while civil conciliation cases significantly decreased, revealing a severe gap between law and reality. Consequently major provisions of the Act had to be amended on November 30, 1992, only two years after the Act entered into force. The Act has been further amended several times since in order to improve and amend some defects found in the course of implementation of the civil conciliation system and to back up the promotion of conciliation systematically.

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21) The purpose of this act enacted and entering into force on December 31, 1970 was to prevent the delay in handling cases, promote speedy realization of citizens' rights and duties, and facilitate prompt settlement of disputes (Article 1) and to provide for special cases concerning civil litigation, auction, the procedure for non-litigious cases, registration of corporations, and notarization (Article 2). Upon a motion by either party to a civil dispute within the jurisdiction of a single judge of a district court, the court may put the case to conciliation (Article 7), and the Act on Mediation in Lease or Rent of Land and Houses applies to such conciliation *mutatis mutandis* (Article 8).

22) The Trial of Small Claims Act was enacted on February 24, 1973 and entered into force on September 1, 1973 to provide for special exceptions to the Civil Procedure Act, to allow for handling small claim cases promptly through summary proceedings (Articles 1 and 2).

2. Arbitration

Act No. 1767 of 1966 was enacted as the Arbitration Act for the purpose of facilitating prompt and economical resolution of disputes according to actual conditions of transactions, by promoting the resolution of disputes under private law by an arbitrators' arbitration award pursuant to an agreement between parties.

The Supreme Court of Korea has exerted its efforts in promoting the utilization of the conciliation system as a means to ease the excessive case loads arising from a shortage of judges, and the Judicial Conciliation of Civil Disputes Act was enacted as part of such efforts by consolidating, abolishing, and integrating provisions relevant to civil conciliation prescribed in individual Acts in 1990.

The framework act that governs arbitration is the Arbitration Act, which was wholly amended in 1999 so as to provide for an internationalized and advanced arbitration system. The Korean Commercial Arbitration Board is the representative permanent arbitration organization. It provides, not only permanent arbitration services or institutional arbitration services, but also discretionary arbitration services or temporary arbitration services. Meanwhile, the Press Arbitration Commission is actually a conciliation organization, irrespective of its name.

Ⅱ. Types of Dispute Mediation System in Korea

The number of disputes resolved by an ADR method, such as compromise, counseling, intercession, mediation, and arbitration, has also been increasing in Korea, and the representative methods among them are mediation and arbitration.

ADR is classified into judicial, administrative, and private ADR: Civil conciliation and domestic conciliation are judicial ADR; the Construction Dispute Mediation Committee, the Industrial Property Dispute Mediation Committee, the Electronic Commerce Dispute Mediation Committee, etc. are administrative ADR agencies; and the Korean Commercial Arbitration Board is a private ADR. Conciliation originally means that a third party in a neutral position arbitrates parties to a dispute and compromises the parties' claims to help them attain compromise but today, generally refers to civil conciliation conducted institutionally by a court. At present, conciliation in Korea is conducted by courts, various administrative agencies, organizations, etc.

1. Judicial ADR

Forms of judicial ADR in Korea are civil conciliation and domestic conciliation: Civil conciliation is governed by the Judicial Conciliation of Civil Disputes Act, whereas domestic conciliation is governed by the Family Litigation Act.[23)]

Judicial compromise or pre-litigation compromise can also be classified into judicial ADR in a broad sense, since a court intervenes in a dispute, but the dispute is resolved independently by mutual understanding between parties essentially.

2. Administrative ADR

Most forms of administrative ADR in Korea are based on individual Acts, and mediators are appointed or commissioned mainly by the head

23) Articles 49 through 61.

of the relevant administrative agency, from among persons who have knowledge and experience in relevant fields, mostly from legal circles, from academic circles, public officials, etc. Although conciliation, intercession, adjudication, etc. are conducted in the context of administrative ADR, mediation is the form used most frequently. Administrative ADR is administered by an administrative agency, by an institution affiliated with an administrative agency, or by an independent organization or a private organization. However, there is no difference among forms, and the number of cases for which a dispute mediation committee is established under an individual Act is gradually increasing.

Classification according to individual statutes governing administrative ADR forms

Category	Applicable statute	Name of institution
Dispute mediation committee affiliated with an administrative agency	Framework Act on the Construction Industry	"Construction Dispute Mediation Committee" of the Ministry of Land, Infrastructure and Transport
	Building Act	"Specialized Building Committee" of the Ministry of Land, Infrastructure and Transport
	Environmental Dispute Adjustment Act	"Environmental Dispute Adjustment Committee" of the Ministry of Environment
	Act on Registration of Credit Business and Protection of Finance Users	"Dispute Mediation Committee" of each City/*Do*
	Medical Service Act	"Medical Service Review and Mediation Committee" of the

Category	Applicable statute	Name of institution
		Ministry for Health, Welfare and Family Affairs
	Passenger Transport Service Act	"Mutual Aid Dispute Mediation Committee of the Ministry of Land, Infrastructure and Transport
	Invention Promotion Act	"Industrial Property Dispute Mediation Committee" of the Korea Intellectual Property Office
	Distribution Industry Development Act	"Distribution Dispute Mediation Committee" of each City/*Do*
	Special Act on the Development of Traditional Markets and Shopping Districts	"Market Dispute Mediation Committee" of each City/*Do*
Dispute mediation committee affiliated with an institution or corporation affiliated with an administrative agency	Framework Act on Consumers	"Comsumer Dispute Mediation Commission" of the Korea Consumer Agency affiliated with the Fair Trade Commission
	Act on the Establishment, etc. of Financial Services Commission	"Financial Dispute Mediation Committee" of the Financial Supervisory Service
	Framework Act on Electronic Transactions	"Electronic Commerce Dispute Mediation Committee" of the Korea Institute for Electronic Commerce affiliated with the Ministry of Knowledge Economy
	Act on Promotion of Information and	"Personal Information Dispute Mediation Committee" of the Korea

Category	Applicable statute	Name of institution
	Communications Network Utilization and Information Protection, etc.	Information Security Agency affiliated with the Korea Communications Commission
	Community Credit Cooperatives Act	Mutual Aid Dispute Mediation Council" of the Korean Federation of Community Credit Cooperatives
	Fair Transactions in Franchise Business Act	"Franchise Transaction Dispute Mediation Council" of the Korea Fair Trade Mediation Agency
	Fair Transactions in Subcontracting Act	"Subcontracting Dispute Mediation Council" established in each business association
Dispute mediation committee affiliated with an independent organization	Attorney-at-Law Act	Each regional bar association
	Enforcement Decree of the Agricultural Cooperatives Act	"Dispute Mediation Committee" of the National Agricultural Cooperative Federation
Independent dispute mediation committee	Trade Union and Labor Relations Adjustment Act	"Mediation Committee" of the Labor Relations Commission
	Act on Press Arbitration and Remedies, etc. for Damage Caused by Press Reports	"Press Arbitration Commission
	Copyright Act	"Korea Copyright Commission"

Furthermore, administrative mediation agencies may be categorized as commerce, construction, real estate, intellectual property, environment, etc. as follows, according to the categories of cases within the jurisdiction of each administrative agency and relevant law.[24)]

Classification of administrative ADR into categories of business[25)]

Category	Name of institution
Commerce	Fair Trade Dispute Mediation Council, Franchise Transaction Dispute Mediation Council, International Contract Dispute Mediation Committee, Local Government Contract Dispute Mediation Committee, Distribution Dispute Mediation Committee
Construction and real estate	Construction Dispute Mediation Committee, Building Dispute Mediation Committee, Subcontracting Dispute Mediation Council, Defect Review and Dispute Mediation Committee, Mutual Aid Dispute Mediation Committee, Central Committee for Mediation of Disputes over Management of Multi-Family Housing, Committee for Mediation in Disputes over Management of Multi-Family Housing, Rental Housing Dispute Mediation Committee
Consumer finance	Consumer Dispute Mediation Commission (Fair Trade Commission), Financial Dispute Mediation Committee, Credit Business Dispute Mediation Committee, Committee for Mediation in Postal Insurance Disputes

24) Park Kwang-seo, “A Research Study on Domestic ADR (Alternative Dispute Resolution) Agencies,” A Report on Research Services commissioned by the Ministry of Justice, Nov. 2014, p. 160.

25) The Industry-Academia Partnership of the Ministry of Justice and Chung-Ang University, “The Direction in Enactment of the Framework Act on ADR and a Scheme for Rational Operation of Current ADR Agencies,” The 2015 Report on Research Services commissioned by the Ministry of Justice, pp. 12-13.

Category	Name of institution
Internet	Committee for Mediation in Disputes over Electronic Documents and Electronic Commerce, Committee for Mediation in Disputes over Internet Domain Names, Committee for Mediation of Disputes over Internet Domain Names in Korean, Personal Information Dispute Mediation Committee
Press	Broadcasting Dispute Mediation Committee, Defamation Dispute Mediation Board
Traffic and transport	Mutual Aid Mediation Committee, Council for Examination of Disputes over Medical Fees for Auto Insurance
Intellectual property	Committee for Mediation of Disputes over Industrial Technology, Committee for Mediation and Arbitration of Disputes over Technology of Small and Medium Enterprises, Industrial Property Dispute Mediation Committee, Committee for Examination and Mediation of Layout Designs, Korea Copyright Commission, Content Dispute Mediation Committee
Environment	Central Environmental Dispute Adjustment Committee, Environmental Dispute Adjustment Committees
Medical service	Korea Medical Dispute Mediation and Arbitration Agency, National Health Insurance Dispute Mediation Committee
Education	Self-Regulating Committee for Measures against School Violence, Private School Dispute Resolution Committee, School Education Dispute Mediation Committee
Labor	Labor Dispute Mediation Committee, Committee for Mediation in Labor Relations of Teaching Staff Members, Committee for Mediation of Labor Relations of Public Officials, Seafarer Labor Relations Committee
Miscellaneous	Central River Management Committee, Market Dispute Mediation Committee, Urban Dispute Mediation Committee,

Category	Name of institution
	Local Government Dispute Mediation Committee, Mediation Committee of the National Human Rights Commission, Seed Committee, Central Fisheries Mediation Committee, Fisheries Mediation Committee, Electricity Committee

3. Private ADR

At present in Korea, non-governmental organizations sometimes participate in the process of resolving a social dispute, but it is difficult to find private ADR organizations established mainly for dispute resolution. The Korean Commercial Arbitration Board is the only permanent private ADR organization. The Korean Commercial Arbitration Board mainly engages in arbitration but also provides services for intercession, mediation of disputes over international trade, mediation of disputes over reliability, etc. as well. Arbitration mainly conducted by the Korean Commercial Arbitration Board is governed by the Arbitration Act and Arbitration Rules.

Furthermore, there are organizations operated as purely private dispute resolution agencies by associations of legal professionals, such as Seoul Bar Association, the Korea Association of Beommusa Lawyer, and the Seoul Central Association of Beommusa Lawyer, and the dispute resolution institutions established by religious organizations, such as the Korea Christian Conciliation and Arbitration Institute and the Korea Buddhist Reconciliation and Arbitration Institute, have recently commenced operation. The distinct feature of such institutions is that each of them

conduct conciliation jointly with courts in connection with early conciliation of the Seoul Central District Court.

In particular, Seoul Bar Association plainly indicates the actual nature of private ADR institutions in Korea. Seoul Bar Association opened an arbitration center in December 21, 2006 as part of its efforts to provide legal aid and conduct *pro bono* activities according to discussions made by the Committee for the Promotion of Reform of Judicial Systems and formed a legion of arbitrators with 270 member attorneys, to provide arbitration services in civil cases of small claims for not exceeding 20 million won. However, the center did not make any notable achievements after it handled a few cases at the early stage. After the arbitration center signed a memorandum of understanding with Seoul Central District Court on June 1, 2010 to provide services for early conciliation of the cases referred to it by the court, it opened a "conciliation and arbitration center" on June 5, 2012 to extend the scope of the "arbitration" center and has been in more active service ever since. This seems to indicate a specific scheme to promote private ADR in Korea.[26)]

26) The Judicial Policy Research Institute of the Supreme Court of Korea, Ibid. p. 348.

CHAPTER Ⅳ Current Statute and Exemplary Cases of Dispute Resolution Systems in Korea

Ⅰ. Judicial ADR

1. Operation and Composition

(1) Compromise

The compromise system provided for in the statutes of Korea can be divided mainly into three types: A settlement agreement under the Civil Act, which is substantive law, and pre-court settlement and compromise in litigation under the Civil Procedure Act, which are procedural law.

Settlement agreements prescribed in Article 731 of the Civil Act are made often in the form of an agreement on settlement in real life. If a victim agrees to settle a tort case, the parties to the conflict are deemed to have reached a compromise. Since a settlement agreement is a special agreement on non-litigation or an agreement on waiver of rights, and a compromise has a creative effect prescribed in Article 732 of the Civil Act, rights existing prior to the compromise are deemed to be extinguished. In other words, the dispute is deemed to be resolved by the compromise. This seems to be a useful consideration to take into account when a contract is made between private persons in connection with negotiations or mediation in the private sector in Korea as well. Like an agreement for settlement that can be made in connection with resolution of a dispute, a preliminary contract can be made to reach a contract for

settlement by concluding a contract to commence negotiations or mediation.[27)]

Pre-court settlement (Article 135 of the Civil Procedure Act) means a compromise that the parties to a dispute reach in a court prior to filing for a lawsuit and that is enforceable as a final judgment when the terms and conditions of the compromise are reduced to a deed of compromise. Compromise in litigation (Article 355 of the Civil Procedure Act) means the resolution of a dispute by an agreement between parties to the dispute, without a court judgment, after litigation begins, which is also as enforceable as a final judgment upon reducing the terms and conditions of the compromise to a deed of compromise, once the parties reach an agreement. The Civil Procedure Act of Korea was amended in 2002 to encourage compromise between parties to a dispute. The Act provides that a court, a commissioned judge, or an entrusted judge may, *ex officio*, decide to recommend that the parties reaches a compromise with regard to a case pending in the court in order to resolve the case equitably to the extent that such decision is not contrary to the objective of the claim, taking into consideration the parties' interests and all other circumstances (Article 225 of the Civil Procedure Act).

If neither party of a dispute files an objection within two weeks after the parties are served with a deed of the decision to recommend a compromise or a written decision thereon, a judicial compromise is deemed to have been made. (Article 226 of the Civil Procedure Act). This means that compromise can be regarded as a system positively recommended within litigation proceedings.[28)]

27) Kim Yeong-uk, Ibid. pp. 335-336.
28) Kim Yeong-uk, Ibid. p. 337.

Compromise under private law (Article 731 of the Civil Act) means an agreement that parties to a conflict reaches, following the process of settlement through a settlement agreement under the Civil Act. Generally, the process of settlement in the context of ADR begins with the process of negotiations according to an agreement made on the commencement of negotiations, and the parties' duty to observe an agreement becomes effective when the parties reach an agreement on the outcomes of negotiations. However, in reality, an agreement on the commencement of the process is omitted, and only the agreement on the outcomes of negotiations is made in accordance with the requirements under contract law after negotiations are concluded. Agreements made between individuals in daily life are usually in this form. It can be said that a settlement agreement is protected by contract law and that its enforceability is guaranteed under contract law.

A judicial compromise, whether made prior to or during litigation, becomes as effective as a final judgment upon reducing terms and conditions of the compromise to a deed of compromise, may be referred to in a future judgment, and is enforceable, but a compromise under private law by a contract does not have the same effect as a final judgement. Moreover, the outcomes of a compromise, in cases of judicial compromise, may be invalidated or modified by retrial; while the outcomes of a compromise under private law may be invalidated, if either party's standing is found defective or an error is found regarding any matter other than the dispute that is the subject-matter of the compromise.[29)]

29) Kim Yeong-uk, Ibid. p. 338.

(2) Civil conciliation

Civil conciliation refers to a conciliation under the Judicial Conciliation of Civil Disputes Act, and a judge in charge of conciliation, a conciliation committee, or a court of a lawsuit plays a role as conciliator. In addition to conciliation upon a motion (Article 2 of the Judicial Conciliation of Civil Disputes Act), the court of a lawsuit pending litigation may submit the case to civil conciliation by its decision before the appellate court renders a judgment (Article 6 of the afore-mentioned Act), and the court that submits the case to conciliation may handle the case directly, if it finds it reasonable for it to conduct the conciliation directly (Article 7 (3) of the afore-mentioned Act).

When an agreement between parties to a conflict is reduced to a deed of compromise, the agreement is as effective as a judicial compromise. Furthermore, the conciliator of a court may advise parties to a case to make an agreement through *ex officio* conciliation.

Conciliation proceedings terminate when parties to a case brought to conciliation proceedings fail to reach an agreement and the failure of conciliation is reduced to a writing. In such cases, the court makes an *ex officio* decision substituting conciliation, unless there is a reasonable ground to the contrary (Article 30 of the afore-mentioned Act). This is usually called *ex officio* conciliation or forced conciliation. Either party may file an objection to a decision substituting conciliation within two weeks from the day on which the party is served with an authenticated copy of the decision, and upon receipt of a meritorious objection, litigation is resumed (Articles 34 and 36 of the afore-mentioned Act). However, if parties reach an agreement, the agreement becomes as effective as a judicial

compromise when the terms and conditions of the agreement are reduced to a deed of compromise (Article 29 of the afore-mentioned Act).

(3) Domestic conciliation

Domestic conciliation can be classified into conciliation upon either of party's motion for conciliation and conciliation brought to conciliation *ex officio* by a family court. Unlike civil cases, the Principle of Mandatory Conciliation Prior to Litigation applies to some categories of domestic cases. If a person files a lawsuit or a petition for a decision without requesting domestic conciliation with regard to a Category B domestic litigation case[30] or Category C domestic litigation case[31] or a Category E domestic non-litigation case,[32] the family court, *ex officio*, submits the

30) 1) Confirmation as to whether a *de facto* marital relationship exists; 2) dissolution of marriage; 3) revocation of divorce; 4) judicial divorce; 5) determination as to fatherhood; 6) denial of a legitimate child; 7) revocation of an affiliation; 8) objection against as to an affiliation; 9) request for an affiliation; 10) revocation of an adoption; 11) revocation of waiver of adoption; 12) judicial waiver of adoption; 13) revocation of full adoption; 14) waiver of full adoption.

31) 1) A claim for compensation for loss caused by cancellation of engagement or by unlawful annulment of a *de facto* marriage relationship (including a claim against a third person) and a claim for restitution; 2) a claim for compensation for loss caused by nullification or revocation of marriage or of divorce, or by divorce (including a claim against a third person) and a claim for restitution; 3) a claim for compensation for loss caused by nullification or revocation of adoption or of a waiver of adoption, or by a waiver of adoption (including a claim against a third person) and a claim for restitution; 4) a claim for setting aside a fraudulent act for the preservation of a claim for the division of property under Article 839-3 of the Civil Act and a claim for restitution.

32) 1) Disposition regarding the cohabitation, support, cooperation, or bearing of living expenses by husband and wife under Articles 826 and 833 of the Civil Act; 2) disposition regarding a change of a property administrator or the division of common property under Article 829 (3) of the Civil Act; 3) disposition regarding the fostering of children or a change thereof, the restriction or exclusion of visitation rights under Articles 837 and 837-2 of the Civil Act (including where any of the afore-mentioned

case to domestic conciliation (Article 50 of the Family Litigation Act).

As in civil conciliation, a judge in charge of conciliation, a conciliation committee, or a court of a lawsuit plays a role as conciliator in matters subject to the Family Litigation Act. A conciliation committee is comprised of one chief conciliator and at least two conciliators; and the chief conciliator is designated by the chief judge of the relevant family court or of the relevant branch court of a family court from among judges in the court (Articles 52 (1) and 53 (1) of the afore-mentioned Act). If the judge in charge of a conciliation proceeding has a reasonable ground and neither party expressly manifests an objection thereto, he or she may conduct the conciliation (Article 52 (2) of the afore-mentioned Act). Domestic conciliation differs from civil conciliation in that the domestic conciliation committee is the primary conciliation body, whereas the judge in charge of a civil conciliation proceeding is the primary conciliation body. Moreover, there is a difference in the term of office of conciliators, as the term of office of conciliators of domestic cases is one

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provisions is applicable *mutatis mutandis* pursuant to Article 843 of the afore-mentioned Act and where the cause is the revocation of marriage or an affiliation); 4) disposition regarding the division of property under Article 839-2 (2) of the Civil Act (including cases to which the afore-mentioned paragraph applies *mutatis mutandis* pursuant to Article 843 of the afore-mentioned Act and where the cause is the revocation of marriage); 5) designation and change of the person with parental authority under Article 909 (4) and (6) of the Civil Act (including where the cause is the annulment of marriage); 6) decision substituting consent by the person with parental authority under Article 922-2 of the Civil Act; 7) declaration of the forfeiture, temporary suspension, partial restriction, or reinstatement of parental authority or declaration of the forfeiture or reinstatement of power of attorney for legal acts or property administratorship under Articles 924, 924-2, 925, and 926 of the Civil Act; 8) disposition regarding the support of livelihood under Articles 976 through 978 of the Civil Act; 9) decision on contributory portions under Article 1008-2 (2) and (4) of the Civil Act; 10) disposition regarding the division of inherited property under Article 1013 (2) of the Civil Act.

year, whereas the term of office of conciliators of civil cases is two years in principle. However, such difference is not a substantive issue, since conciliators of civil cases concurrently serve as conciliators of domestic cases in most courts.

2. Status and Exemplary Cases

(1) Status

The number of lawsuits filed on the merits with district courts nationwide far exceeds one million cases annually during the preceding several years, and this trend is expected to continue.

Meanwhile, the number of applications filed by parties to a dispute now slightly exceed 10,000 cases annually, although the number of such cases has been gradually increasing. It is found that the number of such applications filed annually does not exceed one percent of the number of lawsuits filed annually. On the contrary, the number of cases referred to a conciliation proceeding, among pending lawsuits, has increased substantially recently, thanks to courts' constant efforts to promote conciliation. Nevertheless, such cases number approximately 80,000[33] annually during 2013 and 2014, which is still at a low ratio of 7 percent, compared with the total number of cases filed annually.

33) However, statistics were not available with regard to the cases where the court hearing a case attempted to directly conduct conciliation but failed to settle the case, among the number of cases "conciliated by the court hearing the relevant case," and the above-mentioned figure was based on the number of cases settled by conclusion of conciliation or finalization of forced conciliation. However, the number of cases actually conciliated by the court hearing the relevant case is more than the above- mentioned figure.

Moreover, among the number of cases referred to conciliation, the cases in which the court of a lawsuit directly conducts conciliation exceeds the number of cases submitted for conciliation to a judge in charge of conciliation.

Further details about the status are as follows:[34)]

Number of Lawsuits and Conciliation Petitions Filed Nationwide

Year	Lawsuits filed with trial courts (cases)	Conciliation petitions	
		Applications filed (cases)	Ratio of conciliation petitions to lawsuits (%)
2010	9891,188	10,166	1.03
2011	985,533	7,722	0.78
2012	1.044,928	8,112	0.78
2013	1,095,915	9,934	0.91
2014	1,136,935	11,176	0.98
Jan. - Aug. 2015	688,041	6,998	1.01

※ Source: Judicial Yearbook (except the statistics for the period Jan. to Aug. 2015, which are from the Monthly Court Statistics Report)

34) The Council of Conciliators of Seoul Central District Court, Jojeng Madang Yeolin Daehwa (Issue 8), 2015, p. 80.

Number of Cases Brought to Conciliation Nationwide

Year	Cases Submitted to Conciliation				
	Conciliation by Judge in Charge of Conciliation (cases)	Conciliation by the court hearing the case (cases)	Total (cases)	Ratio of cases conciliated by the court hearing the case (%)	Ratio of cases brought to conciliation to lawsuits (%)
2010	6,026	58,729	64,935	90.44	6.62
2011	9,616	57,474	67,090	85.68	6.81
2012	15,378	59,655	75,033	79.51	7.18
2013	30,926	53,225	84,151	63.25	7.68
2014	37,025	45,743	82,768	55.26	7.28
Jan. - Aug. 2015	27,444	26,742	54,186	49.35	7.87

※ Source: Judicial Yearbook (except the statistics for the period Jan. to Aug. 2015, which are from the Monthly Court Statistics Report)

※ The number of cases conciliated by the court of a lawsuit is based only on the number of cases settled by conciliation and the number of cases settled by forced conciliation.

(2) Exemplary cases

1) One-person church case[35)]

[Facts of the case]

· The new owner of a five-story building acquired in an auction filed a lawsuit for eviction against a pastor who had his church in the basement of the building. The pastor argued that he was a tenant protected by the Housing Lease Protection Act and that he would not vacate the basement before his lease deposit was refunded. However, the new owner argued that the pastor's argument was absurd because the building was not for residence and that the pastor's purpose of leasing the basement was not residential but for a church.

[Outcomes of conciliation]

· Whether a residential building is eligible for protection under the Housing Lease Protection Act is not determined only based upon descriptions in such official records as the building management register, but is determined also according to the purpose of lease of the building and the actual use of the building in connection with the location, structure, etc. of the building. If the subject matter of lease consists of an area used for residence and a non-residential area, the eligibility for protection is determined according to the purpose of use, based upon the main purpose of use. In order for a building to be subject to the Housing Lease Protection Act, the building must first have an actual layout for residential purposes or for a combined purpose in addition to residential purpose in its structure, as at the time the relevant lease agreement is concluded.

In this case, it seemed impracticable to regard the defendant as a tenant eligible for protection under the Housing Lease Protection Act, although the area at issue was used only for residential purposes as the defendant's

35) The Council of Conciliators of Seoul Central District Court, Jojeng Madang Yeolin Daehwa (Issue 8), 2015, pp. 532-533.

argument, taking into account the facts the building itself was a commercial building in a market, that the purpose of use of the basement was described as office in the building management register, and that the lease agreement made by the defendant and the former building owner stated that the purpose of lease was to operate a church.

However, the defendant faced hardship because he was required vacate his dwelling place without receiving any of the lease deposit as a consequence of the auction of the building. Therefore, the judge determined to persuade the plaintiff to pay an amount that enabled the defendant to rent a room, and the case was settled by conciliation.

2) Bankruptcy discharge case[36)]

[Facts of the case]

· A woman was married as a minor, but her husband who drove his business to ruin had borrowed loans guaranteed by his wife as surety.

The wife could not pay the debts in her name, filed a petition for bankruptcy, and was finally discharged from the debts, and divorced her husband. Thereafter, she remarried, bore children, and had a new family. However, ten years later, she had her bank account attached because of a guaranteed debt of more than 60 million won, of which she was unaware. She thought that she had been discharged from the debt automatically at the time of bankruptcy and filed a lawsuit seeking confirmation of the discharge of the debt with a court, arguing that she had been discharged from the debt as well.

However, she was mistaken. This debt was guaranteed by her for some products that her ex-husband bought from an electronics company, which were not included in the discharged debts because the debt was incurred about one month after she was declared bankrupt.

36) The Council of Conciliators of Seoul Central District Court, Jojeng Madang Yeolin Daehwa (Issue 8), 2015, pp. 534-537.

What was worse, a judgment on the debt became final and conclusive because she did not respond to a lawsuit filed by the creditor against her a few years ago, and thus she had no valid defense against the judgment.

[Outcomes of conciliation]

· The woman feared that the new life she created upon remarrying after severe hardships would be ruined because of the looming debt. The conciliator told her that he would try to conciliate for settlement of the debt as low an amount as possible and persuade her to accept his conciliation proposal, seeking help from her friends and acquaintances, if the creditor accepts his proposal. The conciliator called the creditor's representative, persuaded the representative that this case was not a matter of money but a matter of life, and finally succeeded in settling the case at 15 million won through conciliation.

3) A claim for damages for tortious conduct, such as invasion of privacy caused by noise from other floors[37)]

[Summary of the case]

· The dependants were a couple who moved to a floor below the apartment in which plaintiffs resided. The wife of the defendant, who was a writer (hereinafter "Defendant 1"), argued that: she could not concentrate on writing because of noise from upstairs; the plaintiff's disruptive conduct continued, despite the wife's complaining about the plaintiff's noise; her contract with a publisher was terminated because of poor performance due to such noise and another contract was also terminated because of a delay in writing a movie scenario; she also suffered from other disadvantages. With a strong belief that the noise had been caused by a university student (hereinafter, "Plaintiff 1") who was a daughter among the plaintiffs, Defendant 1 joined

37) The Council of Conciliators of Seoul Central District Court, Jojeng Madang Yeolin Daehwa (Issue 8), 2015, pp. 542-543.

an on-line cafe where Plaintiff 1 had previously joined to find out contact information of a friend of Plaintiff 1, sent text messages to the friend to tell her about the noise upstairs and asked her about violence that Plaintiff 1 allegedly inflicted on her own younger brother (hereinafter, "Plaintiff 2") (it has not been found whether the daughter actually committed such violence. The defendants have not answered the question as to how they became aware of such conduct of Plaintiff 1, if it was true). Later on, Dependant 1 went to the university in which Plaintiff 1 was enrolled, made complaints to the professor in charge and school employees, and conducted one-person picketing to defame Plaintiff 1 (Defendant 1 argued that her conduct did not constitute defamation, because such conduct took place only in relation to the professor in charge whom Plaintiff 1 could control and her acquaintances). Eventually, the plaintiffs filed a claim against the defendants seeking damages, including damages for pain and suffering.

[Outcomes of conciliation]

· In this case, it was not found whether the plaintiffs actually made any noise between floors and whether the degree of the noise between floors was untolerable to the defendants. However, the levels of noise measured and presented by the defendants were between 44 to 67 decibel, and thus it is doubtful whether the noise was so severe as to justify the defendants going to the school of Plaintiff 1. On the contrary, Defendant's acts of finding out friends of Plaintiff 1, sending text messages to a friend of Plaintiff 1, visiting the school of Plaintiff 1, conducting one-person picketing, making her insistences to the professor in charge, school employees, and other persons who had nothing to do with the noise between floors, etc. seemed to constitute criminal conduct, such as serious invasion of privacy. Many ordinary people do not understand that offset is not applicable to criminal liability and misunderstand a victim's acts of inflicting damage on the perpetrator as valid self defense. Thus the conciliator explained such points to the defendants. Since the plaintiffs sought non-monetary remedy, namely an injunction to prevent recurrence of such invasion of privacy, the case was settled by conciliation under the conditions that the defendants should not

repeat such misconduct and, if they fail to comply therewith, should pay a certain amount to the defendants as damages, which was similar to a decision of provisional injunction prohibiting defamation and approach.

4) A claim for the loss of market value of a vehicle due to a traffic accident[38)]

[Summary of the case]

· This case is a claim filed against the defendant for approximately 6,090,000 won as equivalent to the loss due to the reduced price or the depreciation of a motor vehicle caused by a traffic accident. The plaintiff argued that the vehicle could be repaired physically and technically without leaving an defect effecting safety of operation but could not be completely reinstated and the useful life would be reduced, defects in functions and appearance would remain, and the record of the accident would remain unerased.

[Outcomes of conciliation]

· In this case, the trial court assessed the plaintiff's loss of market value at only two million as equivalent to only one-third of the amount of loss the plaintiff claimed, and held that the plaintiff was entitled to 1,058,000 won after deducting 942,000 won already paid by the defendant. The defendant appealed against the judgment. The conciliator explained to the plaintiff that the plaintiff should request and pay for a formal appraisal, because the burden of proof of the loss of market value rested on the plaintiff, whereas nobody could guarantee that outcomes of the appraisal would be favorable to the plaintiff. The conciliator also explained to the defendant that, even where the plaintiff would become entitled to a small amount of no practical use as the loss of market value as a result of appraisal, the judgment would be unfavorable to the defendant, which was an insurance company, because a trend of judgments that would recognize the loss of market value

38) The Council of Conciliators of Seoul Central District Court, Jojeng Madang Yeolin Daehwa (Issue 8), 2015, pp. 543-544.

as general damage (the Supreme Court have already recognized such losses as ordinary losses) would be formed, if such judgments could be continuously accumulated. Finally, the case was settled by conciliation under the conditions that: A clause stating that "the judgment award is paid as a solatium, not for a loss of market value, by an agreement between the parties, considering difficulties in proving the loss of market value" should be inserted in the conciliation agreement; and the defendant should pay the same amount as the judgment award given by the trial court to the plaintiff, and the defendant voluntarily withdrew the appeal.

Ⅱ. Administrative ADR

1. Operation and Composition

Administrative ADR is convenient to parties to a dispute in that most of disputes can be settled free of charge (or at a low cost) by summary proceedings quickly, since there are many cases where people usually tend to ask relevant administrative agencies to resolve a dispute, rather than filing a lawsuit with a court to resolve a dispute.[39] Furthermore, people tend to perceive a petition filed for resolving a dispute with a mediation agency formed as an organ affiliated to an administrative agency of the government as a kind of a petition filed for remedial measures with the administrative agency, and such perception can be a factor of increasing cases resolved by administrative ADR.[40] Besides, the expertise of administrative agencies and the exemption from corrective measures are provided as additional effects, and the system has advantages,

39) Sohn Han-ky et al., "A Study on Measures for Establishment of Social Dispute Mediation System," The Ministry of Education and Human Resources, 2004, pp. 18-19.

40) Kim Keon-sik, "Remedies through Mediation in Disputes Related to Fair Trade," Research Report of the Korea Fair Trade Mediation Agency, 2014, p.58.

such as judicial compromise and the effect of interruption of the period of prescription.

There are currently various kinds of administrative ADR agencies in Korea, but they are governed by different statutes and operated in different ways in terms of the establishment and composition of committees, the commissioning or selection of committee members, the procedure for resolution of disputes, the effect of resolution of disputes, etc.

(1) Consumer Dispute Mediation Commission

<Consumer Dispute Mediation Commission>

Administering authority	Korea Consumer Agency (a public institution)
Basis for establishment	Article 60 of the Framework Act on Consumers
Objectives of establishment	The Consumer Dispute Mediation Commission is a quasi-judicial organization that determines requests for mediation of consumer disputes and issues mediation decisions.
Date established	Aug. 31, 1987 at the first meeting of the Consumer Dispute Mediation Commission
Composition	Composed of not more than 50 members (two standing members and 48 non-standing members), including one chairperson
Matters subject to dispute resolution	The following cases of disputes arising between a consumer and a business entity: - Where the organization established pursuant to Article 16 (1) of the Framework Act on Consumers fails to resolve a consumer dispute;

	- Where the parties fail to reach agreement according to the recommendation of agreement under Article 28 (1) 5.
Effect of dispute resolution	Same as judicial compromise
Web-site	<http://www.kca.go.kr/wpge/m_172/kca6100.do>

1) Objectives of establishment

The Consumer Dispute Mediation Commission was established, and has been operated as an organization affiliated with the Korea Consumer Agency pursuant to the Framework Act on Consumers. The Commission is a quasi-judicial organization that examines mediation requests for consumer disputes and issues mediation decisions. It tries to resolve disputes between parties before judicial proceedings for remedies are conducted by a court.

2) Organizational structure and Composition

The Consumer Dispute Mediation Commission is comprised of not more than 50 members (two standing members and 48 non-standing members), including one chairperson; and has 46 special subcommittees for different fields as advisory organizations that help the Commission carry out its affairs efficiently. A meeting of the Commission is constituted with attendance of the chairperson, standing members, and five to nine members designated by the chairperson for each meeting.

When the chairperson intends to convene a meeting, he or she calls up an equal number of at least one member each as mediators representing the

consumer and the business entity, respectively. The chairperson determines, and gives written notice to each member as to, the date, time, venue for a meeting and items on the agenda by at least three days before the opening of the meeting. A resolution at a meeting of the Commission requires a quorum of a majority of incumbent members and the concurrent votes of a majority of the members present at the meeting.

Sessions of the Consumer Dispute Mediation Commission are divided into dispute mediation hearings and dispute mediation tribunals, which differ as to the number of members participating in a meeting, the chair of the meeting, subject matter of mediation, etc.

Dispute mediation hearings are a subcommittee meeting comprised of the chairperson, standing members, and five to nine members designated by the chairperson for each meeting. Meanwhile, a mediation tribunal is a meeting comprised of the chairperson or a standing member and two to four members designated by the chairperson for each meeting. A dispute mediation hearing is chaired by the chairperson, while a mediation tribunal is chaired by the chairperson or a standing member.

Members of the Commission are appointed or commissioned by the Chairperson of the Fair Trade Commission upon recommendation by the President of the Korea Consumer Agency, from among the following persons, as prescribed by Presidential Decree. The term of office of commission members is three years, but may be renewed consecutively:

1. A person who has served or serves as at least an associate professor or with any equivalent position in a university or an officially recognized research institution and who majors and specializes in any field related to consumer rights;

2. A Grade-IV or higher-ranking public official or a person who has served or serves in an equivalent position in a public institution and who has practical experience in services related to consumer rights;
3. A judge, public prosecutor, or licensed attorney-at-law;
4. A person who serves or has served as an executive officer in a consumer organization;
5. A person who serves or has served as an executive officer of a business entity or a business association;
6. Any other person who has abundant knowledge and experience in providing services related to consumer rights.

3) Dispute Resolution Procedure

The chairperson may advise parties to a dispute to reach agreement within ten days after a request for mediation in the dispute is filed and issue a mediation decision within 30 days after the filing date of the request for mediation in the dispute, except in extenuating circumstances. However, if it is necessary to extend the period for issuing a mediation decision in extenuating circumstances, such as a test or examination for finding causes, the parties shall be notified of the extension with grounds therefor and the deadline.

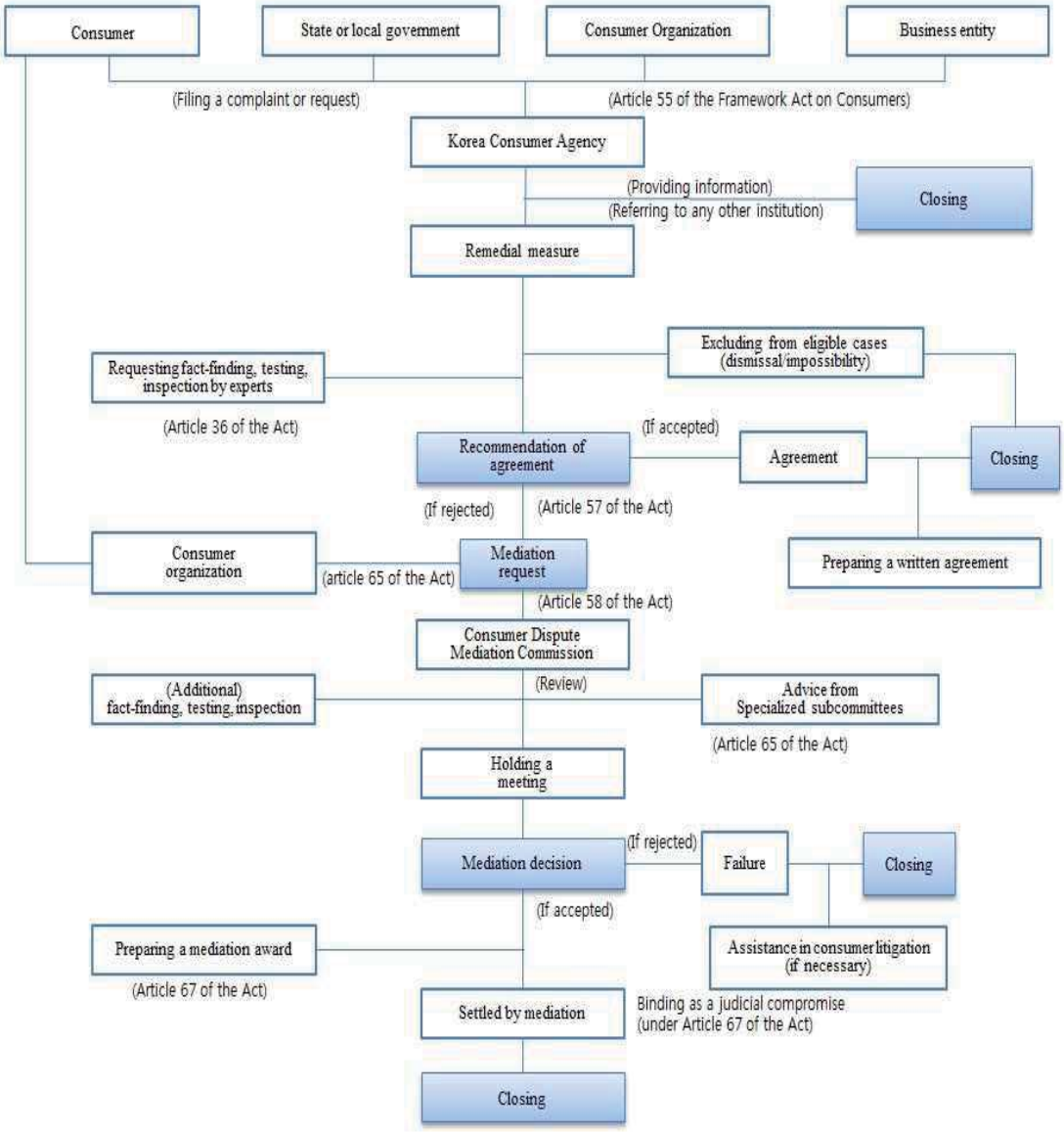
If the Mediation Commission deems it necessary for mediating a dispute, it may seek advice from a special subcommittee and opinions from stake-holders, consumer organizations, or relevant government authorities. In principle, proceedings should be closed to the public, but parties may attend proceedings and express their opinions. Each of the parties is required to answer whether they accept or reject a final mediation

decision within 15 days after they are notified of the mediation decision in writing.

If a mediation decision is accepted by both parties or is not rejected by either party in writing within 15 days after the parties receive the mediation decision, the case becomes settled by mediation. In such cases, the Mediation Committee issues a written mediation decision, keeps the original award on file, and serves both parties with authenticated copies thereof. The terms and conditions of an agreed mediation decision are as binding as a judicial compromise.

If either party rejects a mediation decision of the Mediation Commission in writing within 15 days, the mediation decision becomes invalid, and the case advances to be settled in accordance with civil procedure, which is a judicial procedure for court remedies. If a consumer wishes to file a civil lawsuit for a case where a mediation decision of the Mediation Commission becomes invalid due to rejection by the business entity involved, the Korea Consumer Agency shall assign an attorney-at-law who belongs to the "Legal Aid Counsel" operated by the Korea Consumer Agency to assist the consumer in litigating the case within a specified scope. Furthermore, if a mediation decision issued by the Mediation Commission becomes effective but either party fails to comply with any of the terms and conditions of the decision, the other party may enforce the decision with an enforcement clause issued by the competent court under the Supreme Court Rule No. 1768 (Rule on the Issuance of Execution Clause to Mediation Awards, etc. of Various Mediation Committees, etc.).

Procedure for Mediation by Consumer Dispute Mediation Commission



4) Class dispute mediation

"Class dispute mediation" means a system under which the Consumer Dispute Mediation Commission can mediate disputes as a bundle, if an identical or similar type of loss has been inflicted upon several consumers. The State, a local government, the Korea Consumer Agency, a consumer organization, or a business entity may request or apply for class dispute mediation. No consumer may become an applicant but may participate as a party additionally in a case for which an application has already been filed.

For cases to be eligible for class dispute mediation, the number of consumers who have sustained loss must be at least 50 persons, and each of the cases must have an essential legal or factual issue in common. If a causal act done before the relevant Act entered into force meets the criteria for class dispute mediation, an application may be filed for the relevant cases.

The Consumer Dispute Mediation Commission shall give at least 14 days public notice of the commencement of the proceeding of a case, on the web-site of the Korea Consumer Agency and in daily newspapers distributed nationwide. This is to provide opportunities for consumers who have sustained identical loss to further participate as a party in dispute mediation. A consumer who intends to participate in the proceedings must file a written application during the period of public notice of commencement of the proceedings.

The Mediation Commission must complete dispute mediation within 30 days after the end of the period of public notice of commencement of the proceedings for class dispute mediation. The relevant cases will be

settled by mediation, if parties accept the terms and conditions of dispute mediation or do not express rejection in writing, within 15 days after the parties are notified of the terms and conditions of the mediation decision.

The terms and conditions in cases settled by mediation are as binding as "judicial compromise." In other words, the mediation decision becomes as binding as a final judgment, and thus the decision may be enforced against either of the parties pursuant to an enforcement clause proposed by the competent court, if the party does not comply with the decision.

The Mediation Commission may recommend the business entity who accepts the terms and conditions of a class dispute mediation decision to submit a plan for compensation for third-party consumers who have sustained loss to the Mediation Commission. Thereupon, the business entity must notify the Mediation Commission of whether the business entity accepts the recommendation, within 15 days after it receives the recommendation.

(2) Fair Trade Dispute Mediation Council of the Korea Fair Trade Mediation Agency

<Fair Trade Dispute Mediation Council of the Korea Fair Trade Mediation Agency>

Administering authority	An organization affiliated with the Fair Trade Commission (a public institution)
Basis for establishment	Articles 48-2 and 48-3 of the Monopoly Regulation and Fair Trade Act
Objectives of establishment	To mediate disputes arising from unfair trade practices in connection with fair trade, franchise transactions,

	subcontracting transactions, transactions of large distribution businesses, and terms and conditions of contract, to conduct analyses and research on markets and industries, and to carry out business affairs entrusted by the Fair Trade Commission.
Date established	Dec. 3, 2007
Organizational structure	Not more than seven members, including one chairperson
Matters subject to dispute mediation	A suspected violation of Article 23 (1) of the Fair Trade Act: - Unfairly refusing any transaction, or discriminating against the other party; - Unfairly excluding a competitor; - Unfairly coercing or inducing customers of competitors to deal with the suspected offender; - Unfairly conducting a transaction with the other party, taking into advantage of a dominant position, or conducting a transaction under a condition that unfairly restircts business activities of the other party or disrupting business activities of another enterpriser; - Assisting a specially-related person or another company by engaging in any of the following conducts unfairly: (1) Providing a provisional advance payment, a loan, human resources, real estate, securities, commodities, services, intangible property rights, etc. to a specially-related person or another company or conducting a transaction involving any of such resources with a specially-related person or another company, under substantially more favorable terms and conditions;

	(2) Conducting a transaction through a specially-related person or another company, which does not serve any actual role in the transaction, even when it would be substantially more advantageous to conduct a transaction involving commodities or services directly with another business entity. - Any other act that is likely to undermine fair transactions.
Effect of dispute resolution	Regarded as an agreement concluded on the same terms and conditions as those of the mediation award
Web-site	<http://www.kofair.or.kr>

1) Objectives of establishment

The Korea Fair Trade Mediation Agency was established to meet the demand for an organization that can promptly settle losses of small and medium enterprises incurred by unfair trade practices, through autonomous mediation between parties; respond to rapidly changing economic environment; promote the efficiency in law enforcement through surveys and research on newly emerging industries and forms of transaction; and carry out educational functions for distributing the culture of competition. The Korea Fair Trade Mediation Agency has been resolving disputes arising from unfair practices between business entities in connection with fair trade, franchise business transactions, subcontracts, and transactions with large distribution businesses and unfair terms and conditions of contract, through mediation by the Dispute Mediation Council comprised of experts.

2) Organizational structure and composition

The Korea Fair Trade Mediation Agency has the Fair Trade Dispute Mediation Council, the Franchise Business Dispute Mediation Council, the Subcontracting Dispute Mediation Council, and the Mediation Committee to Resolve Disputes on Terms and Conditions as its affiliates.

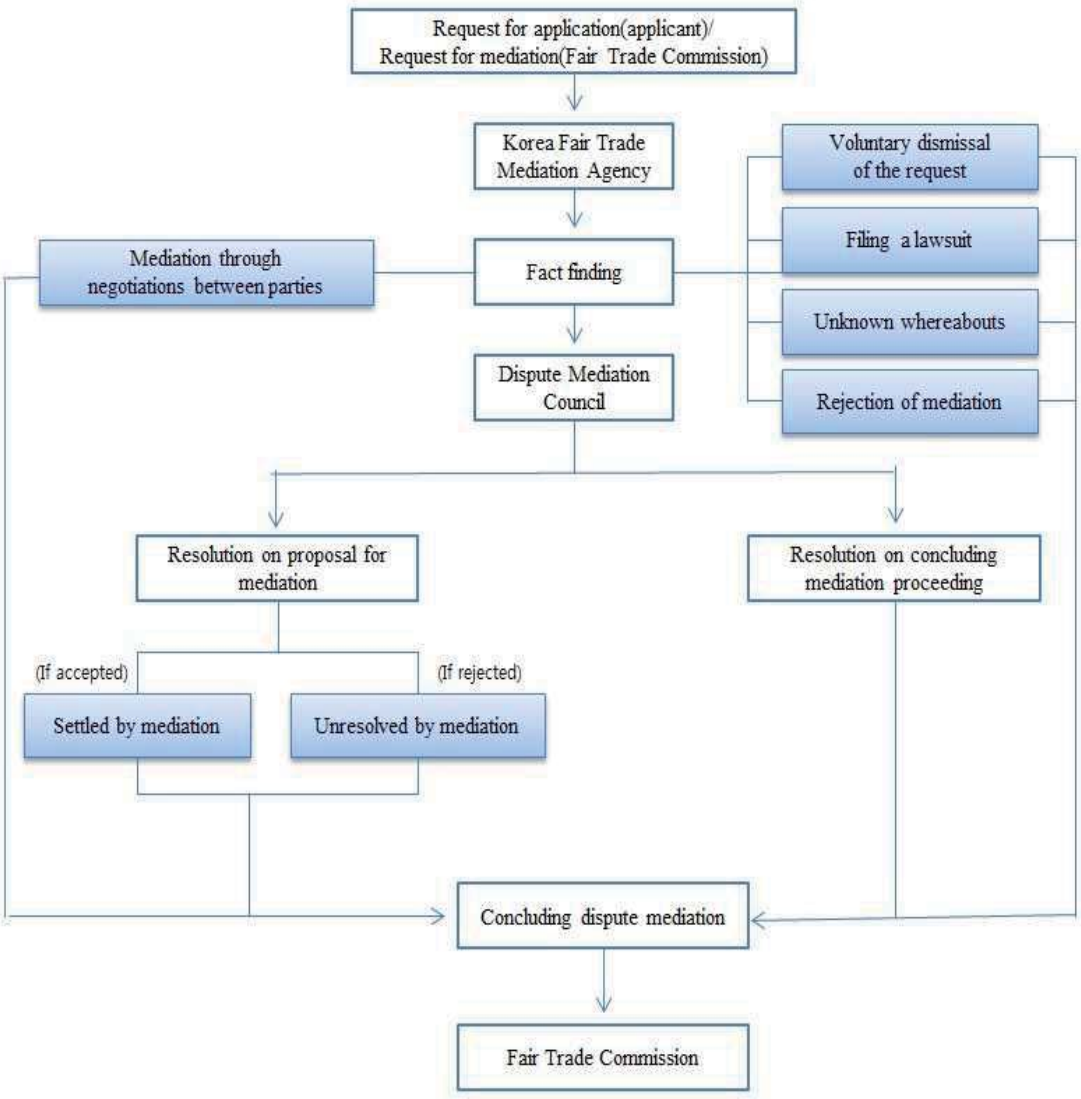
The Fair Trade Dispute Mediation Council is comprised of seven members appointed or commissioned by the Chairperson of the Fair Trade Commission, from among experts in the field of fair trade[41], including professors and lawyers. The term of office of each council member is three years but may be renewed consecutively.

The Fair Trade Dispute Mediation Council recommends parties to a dispute to reach agreement on terms and conditions of mediation independently or formulates and presents a proposal for mediation.

41) (1) A person who has served as a public official who meets the criteria prescribed by Presidential Decree;
(2) A person who has served as a judge, a public prosecutor, or an attorney-at-law for at least the period specified by Presidential Decree;
(3) A person who has majored in law, economics, business administration, or a consumer-related science and has served in a university or an officially recognized research institute for at least the period specified by Presidential Decree as an associate or higher-ranking professor or with any equivalent position;
(4) A person who has engaged in business management or has facilitate activities for consumer protection for at least the period specified by Presidential Decree.

3) Mediation procedure

Procedure for Mediation by the Korea Fair Trade Mediation Agency



(3) Central Environmental Dispute Adjustment Committee

Administering authority	Ministry of Environment (public institution)
Basis for establishment	Article 4 of the Environmental Dispute Adjustment Act
Objectives of establishment	To preserve the environment and arrange compensation for citizens regarding damage to their health and property by resolving environmental disputes promptly, fairly, and efficiently.
Date Established	May 18, 1991
Organizational structure and composition	14 standing members, including the chairperson, non-standing members and a secretariat
Matters subject to dispute resolution	Environmental disputes - Disputes regarding damage to health, property, and mental health caused by air pollution, water pollution, soil contamination, marine pollution, noise, vibration, odor, etc. incurred or is likely to be incurred by business activities or other human activities; - Disputes arising in connection with the installation and management of environmental facilities (waste disposal facilities, sewage terminal treatment facilities, excreta disposal facilities, etc.); - Disputes arising from ground subsidence caused by vibration; - Disputes arising from destruction of the natural ecosystem;

	- Disputes combined with another dispute arising from construction works under Article 2 (1) 9 of the Building Act in cases of a dispute arising in connection with obstruction of sunlight or outlook.
Effect of dispute resolution	If parties accept the proposal for mediation, a deed of mediation is made, and the deed of mediation between the parties has the same binding as a judicial compromise.
Web-site	<http://edc.me.go.kr/>

1) Objectives of establishment

The Central Environmental Dispute Adjustment Committee conduct intercession, mediation, and adjudication as functions for dispute adjustment.

Environmental dispute medication is a system under which administrative agencies with expertise can promptly resolve disputes, big or small, with which citizens face in their daily lives, without following complicated litigation procedures. In order to file a civil lawsuit regarding an environmental dispute, a victim must prove the causal relationship between the conduct and the damage incurred. Ordinary persons who have no legal knowledge need a help from an attorney-at-law at a considerable expense for the proceeding. On the contrary, if a person uses the environmental dispute mediation system, the person can manage mediation proceedings without the help of an attorney-at-law, because the Environmental Dispute Mediation Committee establishes damage on behalf of the person at a low cost and the procedure is simple.

2) Organizational structure and composition

The Committee is comprised of standing members, including the chairperson, and non-standing members and is assisted by its secretariat. The Committee consists of 14 non-standing members and 209 experts in various fields. Members of the Central Environmental Dispute Mediation Committee, including the chairperson, are appointed or commissioned by the President of the Republic of Korea with recommendation of the Minister of Environment from among the following persons who have abundant knowledge and experience in environmental matters. At least three persons are selected from among the following persons. The term of office of each member is two years but may be renewed consecutively:

1. A person who has served as a public official at Grade I through III or as a public official who belongs to the Senior Civil Service for at least three years;
2. A person who has served as a judge, public prosecutor, or attorney-at-law for at least six years;
3. A person who has served as at least an associate professor or equivalent position in an officially recognized university or research institute;
4. A person who has been engaged in any job related to the environment for at least ten years.

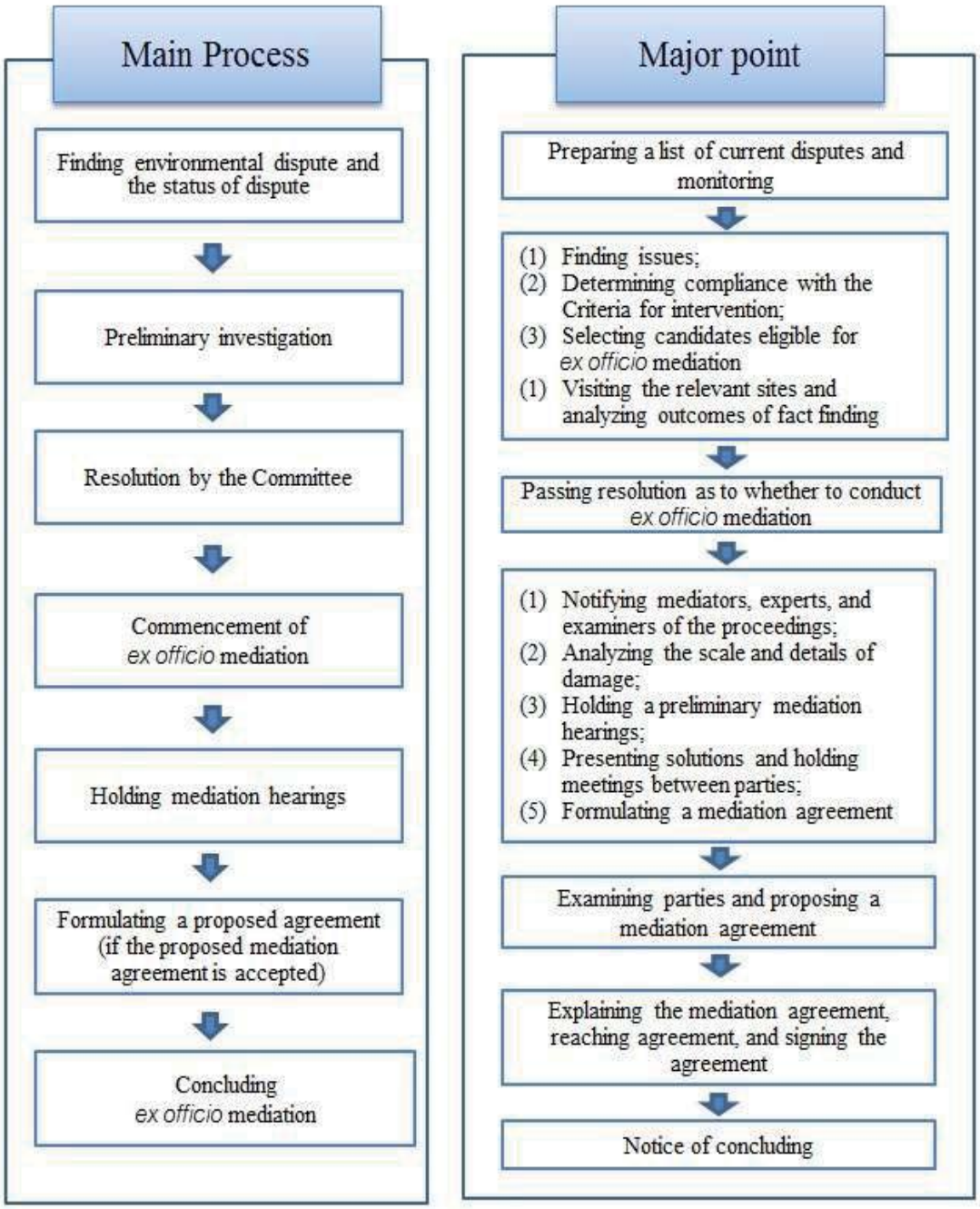
The secretariat should have examiners commissioned from among competent experts in order to conduct investigations into relevant facts and find causal relationships, as necessary for mediating disputes, calculate amounts of damages in environmental disputes, research and formulate

standards for calculation, and carry out other affairs designated by the chairperson of the Committee.

3) Dispute mediation procedure

Ex officio mediation by the Environmental Dispute Mediation Committee is a system through which the Committee may commence an *ex parte* mediation proceeding, with regard to an environmental dispute involving serious harm to human life or body by an environmental pollution, a dispute arising in connection with the installation or management of an environmental facility, or any other environmental dispute likely to have a substantial ripple effect on the society. If parties to a dispute accept a mediation agreement proposed by the Committee, the Committee issues a mediation award, having the same binding as a judicial compromise.

Procedure for Ex Officio Mediation by the Environmental Dispute Mediation Committee



(4) Korea Medical Dispute Mediation and Arbitration Agency

Administering authority	Ministry of Health and Welfare (a public institution)
Basis for establishment	Article 6 of the Act on Remedies for Injuries from Medical Malpractice and Mediation of Medical Dispute
Objectives of establishment	To develop an environment for prompt and fair relief from injuries caused by medical misadventure and for stable provision of medical services of medical personnel
Date Established	Apr. 8, 2012
Organizational structure and composition	One committee, one team, one bureau, and one audit team
Matters subject to dispute resolution	Medical disputes arising from medical misadventure by patients or medical personnel - Medical misadventure: Where a medical person inflicts an injury upon human life or health or property by a medical diagnosis, inspection, treatment or prescription or preparation of any medical or pharmaceutical product, which the medical person performs for a patient
Effect of dispute resolution	A verified mediation agreement or mediation award is as binding as a judicial compromise
Web-site	http://www.k-medi.or.kr

1) Objectives of establishment

The Korea Medical Dispute Mediation and Arbitration Agency is a public institution established and affiliated with the Ministry of Health and Welfare for the purpose of providing prompt and fair remedies for victims (patients) of medical misadventure and developing an environment for providing stable medical services by medical personnel. It has been providing services for agreement and mediation (arbitration) between parties through assessment, calculation of damages by the Mediation Committee, mediation, etc., such as fact finding by assessors, causation, negligence, and verification of residual impairment, with regard to counseling services for medical adventure and cases for which an applicant files a mediation request. The Committee also conducts assessment as requested by other institutions, makes an advance payment for damages in subrogation, researches systems and policies related to medical disputes, prepares statistical data, conducts publicity and education, and carries out other affairs related to medical disputes.

2) Organizational structure and composition

The Committee is comprised of a president, mediation tribunal, assessment tribunal, secretariat, audit team, and committee for deliberation on compensation for medical misadventure.

The mediation tribunal is a medical dispute mediation committee comprised of five mediators who have good standing in the society (two persons from judges, public prosecutors, and licensed attorneys-at-law; one person from medical personnel; one person representing consumer rights; and one professor from a university or an officially recognized research institute).

Examiners of the mediation tribunal are appointed from among qualified experts (including attorneys-at-law) with practical experience, to assist mediators in carrying out relevant affairs.

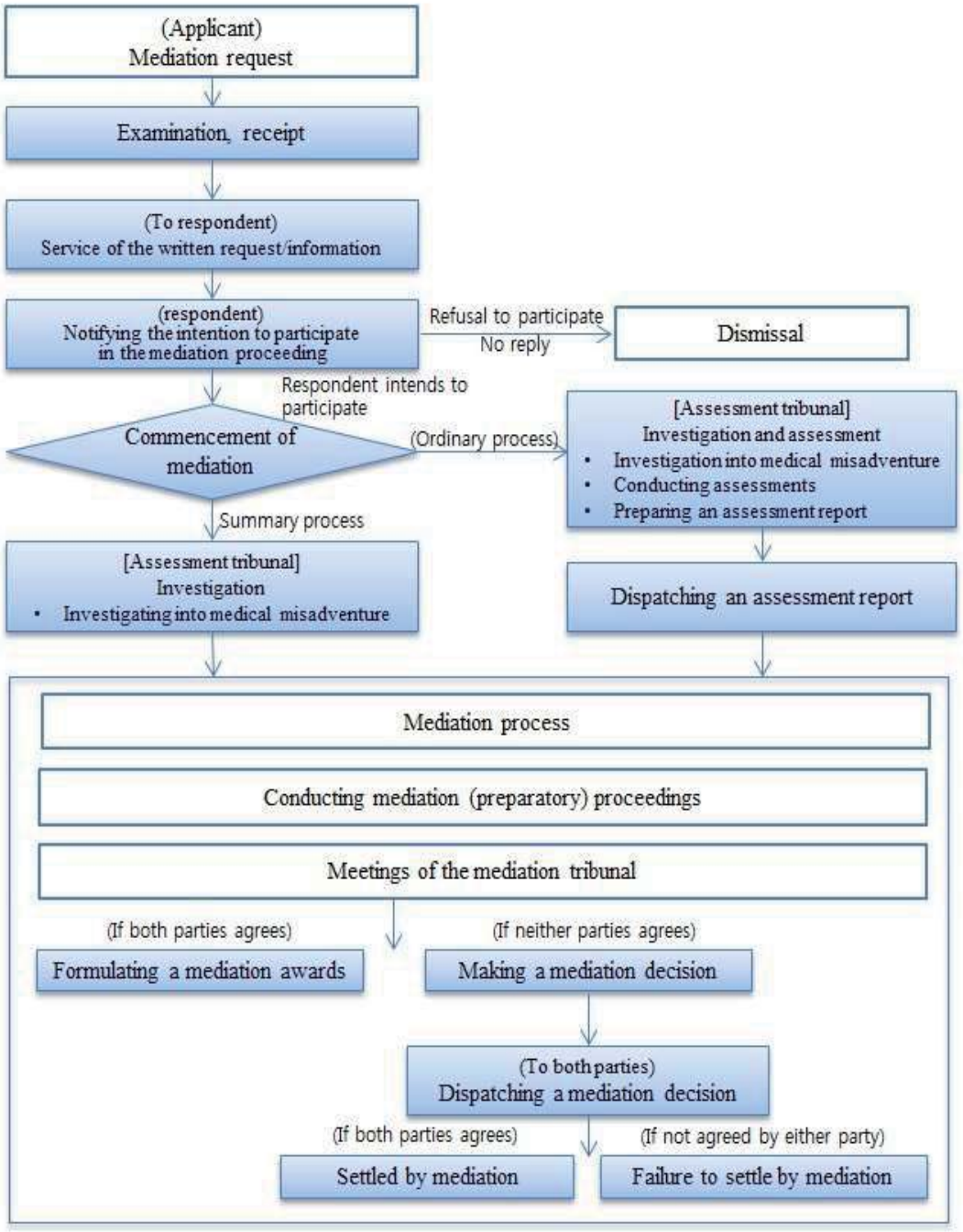
The assessment tribunal is a team comprised of five members with abundant knowledge and experience in assessing medical accidents (two persons from among specialists from each field, dentists, oriental medicine doctors; two persons from among judges, public prosecutors, and licensed attorneys-at-law; and one person representing consumer rights). Investigators of the assessment tribunal are appointed from among qualified experts who have practical experience, such as medical doctors, dentists, oriental medicine doctors, oriental pharmacists, and nurses, to assist assessors.

3) Dispute mediation procedure

The Act on Remedies for Injuries from Medical Malpractice and Mediation of Medical Dispute provides that the Korea Medical Dispute Mediation and Arbitration Agency may intervene only in medical misadventure arising in the course of providing medical services that discontinue after the Act enters into force (Apr. 8, 2012). Thus, it is unable to conduct mediation or arbitration in any medical accident that took place before the Act entered into force. However, the Korea Consumer Agency, the Korea Legal Aid Corporation, etc. may provide counseling services on remedies for injuries caused by medical misadventure that occurred before the Act entered into force.

The Act provides that the statute of limitation period of damages is ten years after the day on which a conduct that gives rise to the relevant medical misadventure discontinues and three years after the day on which the victim becomes aware of the harm or perpetrator. After either of these periods, the victim has no valid claim for damages.

Procedure for Mediation by the Korea Medical Dispute Mediation and Arbitration Agency



(5) Press Arbitration Commission

Administering authority	An independent dispute mediation committee
Basis for establishment	Article 7 of the Act on Press Arbitration and Remedies, etc. for Damage Caused by Press Reports
Objectives of establishment	To mediate and arbitrate disputes arising from press reports or media, and to examine violations
Date established	Mar. 31, 1981
Organizational structure and composition	General assembly of members, steering committee, subcommittee for recommendation of corrective measures, arbitration tribunals
Matters subject to dispute resolution	- Examination of violations of rights and interests of the State, society, or any other person by press reports; - Formulation and amendment of standards for deliberation on recommendation of corrective measures; - Matters tabled by the chairperson in connection with recommendation of corrective measures; - Mediation and arbitration with regard to a request for correction of a news report, a written objection, a follow-up report, or compensation for damages
Effect of dispute resolution	Regarded as effective as a judicial compromise
Web-site	<http://www.pac.or.kr/kor/main/>

1) Objectives of establishment

The Press Arbitration Commission is an organization established to receive requests for a report on an objection or correction of a news report,

a follow-up report, or a claim for damages from persons who have sustained damage due to allegations made by press media, to mediate and arbitrated such cases, and to examine violations committed by press reports.

The press arbitration system in force today started under the Framework Act on Press enacted in 1980 and took concrete shape by the Act on Press Arbitration and Remedies, etc. for Damage Caused by Press Reports in 2005. Thereafter, in response to demands for amending the Act to keep up with the development of Interment media, the Press Arbitration Act was amended in 2009 by supplementing provisions concerning portals and the Internet.

The Press Arbitration Act, which is presently a single Act, provides the comprehensive process of compensation for damages, correction of news reports, requests for reporting objections, etc. as necessary. This system serves as prompt and adequate support for redressing injuries caused by the press. As detailed ADR systems, mediation and arbitration are strictly separated, and the Commission has a more advanced systematic organizational structure than other administrative ADR agencies.

2) Organizational structure and composition

The Arbitration Commission is comprised of between 40 and 90 arbitrators[42], and arbitrators are commissioned by the Minister of Culture, Sports and Tourism. The Arbitration Commission has one chairperson, not

42) (1) A person recommended by the Minister of the National Court Administration from among persons who are qualified as a judge;
(2) A person recommended by the head of the Korea Bar Association under Article 78 of the Attorney-at-Law Act from among licensed attorneys-at-law;
(3) A person who has worked as a journalist or reporter in a press medium for at least ten years;
(4) Any other person who has abundant knowledge and experience in press-related matters.

more than two vice chairpersons, and not more than two auditors, all of whom are elected by and from among arbitrators. The term of office of the chairperson, vice chairpersons, auditors, and arbitrators are three years and may be renewed consecutively only once. The chairperson represents the Arbitration Commission and administers all affairs of the Commission, while vice chairpersons assist the chairperson and act on behalf of the chairperson in accordance with regulations of the Commission, if the chairperson is unable to perform duties in extenuating circumstances.

The auditors audit business operations and accounts of the Arbitration Commission. A resolution at a meeting of the Arbitration Commission requires the attendance of the majority of current members and concurrent votes of a majority of members present at the meeting.

A general meeting of members is formed with nine arbitrators, while the steering committee is comprised of nine arbitrators, elected at a general meeting of members. The term of office of the arbitrators is one year and may be renewed consecutively. The subcommittee for recommendation of corrective measures is comprised of 7 arbitrators, who are elected at a general meeting of members. The term of office of the arbitrators is one year and may be renewed consecutively. The Arbitration Commission has 18 arbitration tribunals in total, 8 in Seoul and 10 in other areas. Mediation is conducted by the competent arbitration tribunal in each area.

3) Dispute resolution procedure

The ADR methods used by the Press Arbitration Commission are mediation and arbitration.

Any person may file a claim for compensation, a request for correction of a news report, a request for the report of an objection, or a request for a follow-up report or two or more requests or claims simultaneously, among

the above-mentioned requests and claims, and may choose mediation or arbitration. In cases of disputes regarding a request for reporting correction of a new report prescribed in the Act on Press Arbitration and Remedies, etc. for Damage Caused by Press Reports, a victim or press medium may file a request for mediation with the Arbitration Commission.

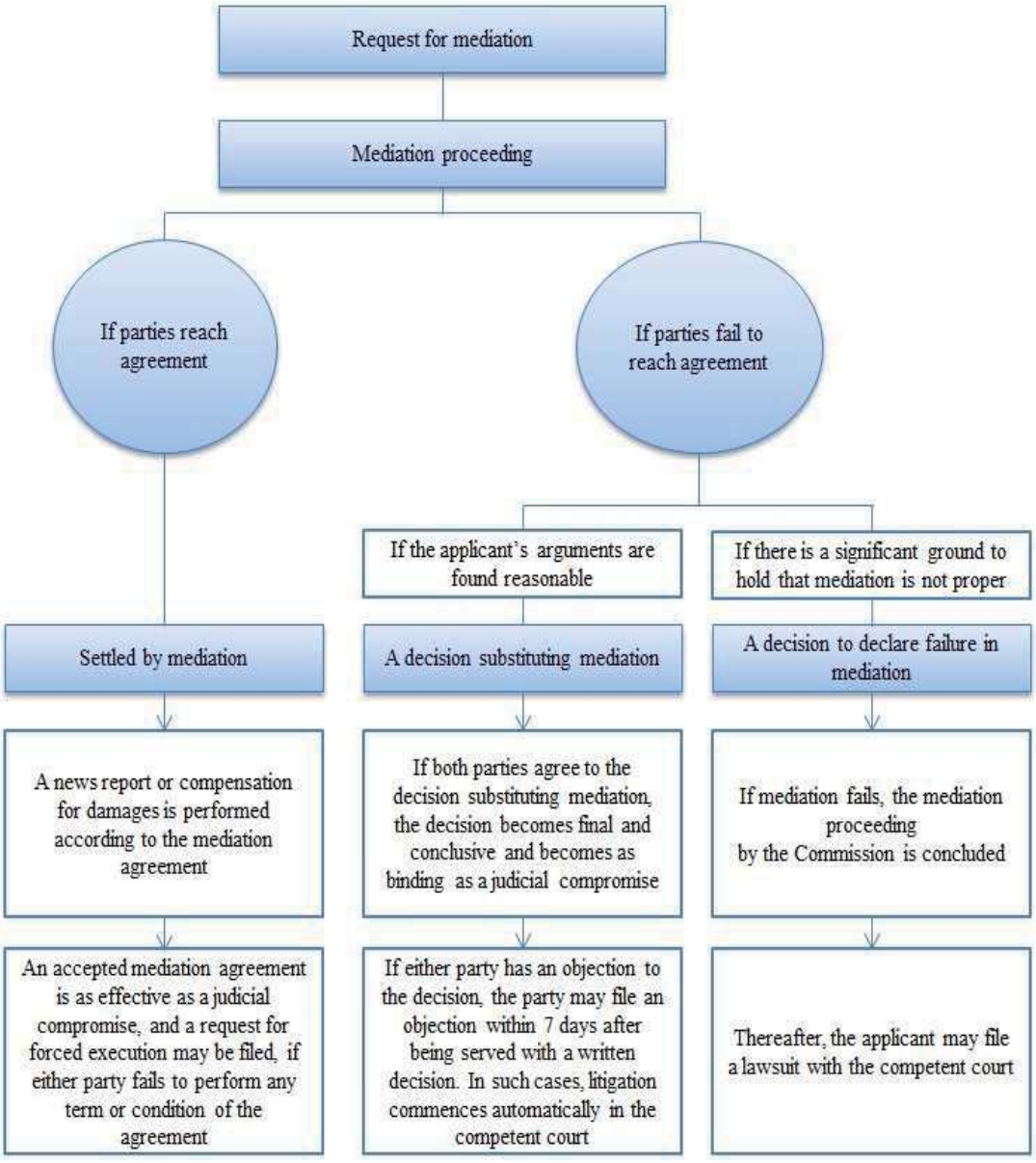
A victim may file a request for mediation in compensation for injuries caused by a news report within six months after the news report is released. In such cases, the victim must clearly state the amount of damages.

Arbitration may be conducted only under an agreement on arbitration between a victim and a press medium, and an arbitration award issued by the Arbitration Commission is as binding as a final judgment. Mediation by the Press Arbitration Commission has a strong tendency to resolve disputes, by persuading parties to a dispute using a mediation proposal formulated by an arbitration tribunal, which intervenes in the conflict as a third party.

If parties accept a proposed mediation agreement, the mediation agreement is concluded, but mediation fails if the proposal is not accepted by either or both of the parties. Mediation in this context is a process for inducing agreement by an arbitration tribunal that intervenes as a third party "with objective, legal standing." Sometimes, an arbitration tribunal as a third party actually makes a decision in lieu of mediation, i.e., *ex officio* mediation. If parties fail to reach a mediation agreement, the arbitration tribunal makes an *ex officio* mediation decision and allow the parties to the conflict to make a subsequent decision thereon. If either party objects to the proposed mediation agreement, a lawsuit is automatically filed through a motion for objection, but the *ex officio* mediation decision becomes as effective as a judicial compromise.[43)]

43) Kim Yeong-uk, Ibid. pp. 287-290.

Procedure for Mediation by the Press Arbitration Commission



(6) Content Dispute Mediation Committee

Administering authority	An institution affiliated with the Ministry of Culture, Sports and Tourism (a public institution)
Basis for establishment	Article 29 of the Content Industry Promotion Act
Objectives of establishment	To mediate disputes between content providers, between a content provider and a user, and between users concerning the trading or use of contents
Date established	April, 2011
Organizational structure and composition	Between 10 and 30 members, including one chairperson (legal circles, academia, the content industry, and user protection organizations) - Ten persons from legal circles, including judges and attorneys-at-law, ten professors from universities, 13 content experts in various fields, and 2 persons specialized in user protection are in service as committee members.
Matters subject to dispute resolution	• Major disputes related to games: - Disputes regarding the refund of a payment made by a minor for a mobile game; - Disputes regarding payments, including withdrawal of subscription and termination or cancellation of a contract; - Disputes arising from failure to provide services, including inability to access a game server, various errors and bugs in a game; - Disputes regarding suspension of accounts for using an illegal program, trading items in cash, etc.; - Disputes regarding compensation for loss caused by the theft of an account;

	- Complaints about standard contract terms and conditions and operating policies unfavorable to customers: • Major dispute cases about content (music, movies, animation, broadcasting, advertising): - Disputes regarding refund for a minor's use of paid IPTV content; - Disputes regarding non-payment of the price for the production of an advertisement or for advertising agency; - Disputes regarding the use and distribution of sound sources; • Major disputes regarding knowledge information: - Disputes regarding the development of content-related software or an application; - Disputes arising from the withdrawal of subscription or the termination of a contract on online lectures; - Disputes regarding the return of teaching materials or gifts for online lectures; • Major disputes regarding characters (cartoons, performances, characters, publishing): - Disputes arising from an exclusive contract with an entertainer.
Effect of dispute resolution	An agreement is deemed made on the same terms and conditions as those in the mediation award. Terms and condition of mediation in a dispute are as effective as those of a judicial compromise.
Web-site	<http://www.kcdrc.kr>

1) Objectives of establishment

In order to keep up with an increasing number of disputes in new forms between players in the content industry arising from the develop-

ment of networks and devices and the growth of the content industry, measures to ensure stable growth of the content industry and to prevent disputes have been sought. It is necessary to implement a system to minimize damage caused by disputes. Thus, the Content Dispute Mediation Committee was established so as to mediate disputes arising from the trading and use of contents between content providers, between a content provider and a user, and between users.

2) Organizational structure and composition

The Content Dispute Mediation Committee is a specialized mediation organization established pursuant to the Content Industry Promotion Act in order to resolve contents-related disputes and are comprised of 28 members commissioned by the Minister of Culture, Sports and Tourism from among persons recommended by legal circles, academia, the content industry, and user protection organizations. ten persons from legal circles, including judges and attorneys-at-law, ten professors from universities, 13 content experts from various fields, and two persons specialized in user protection serve as committee members.

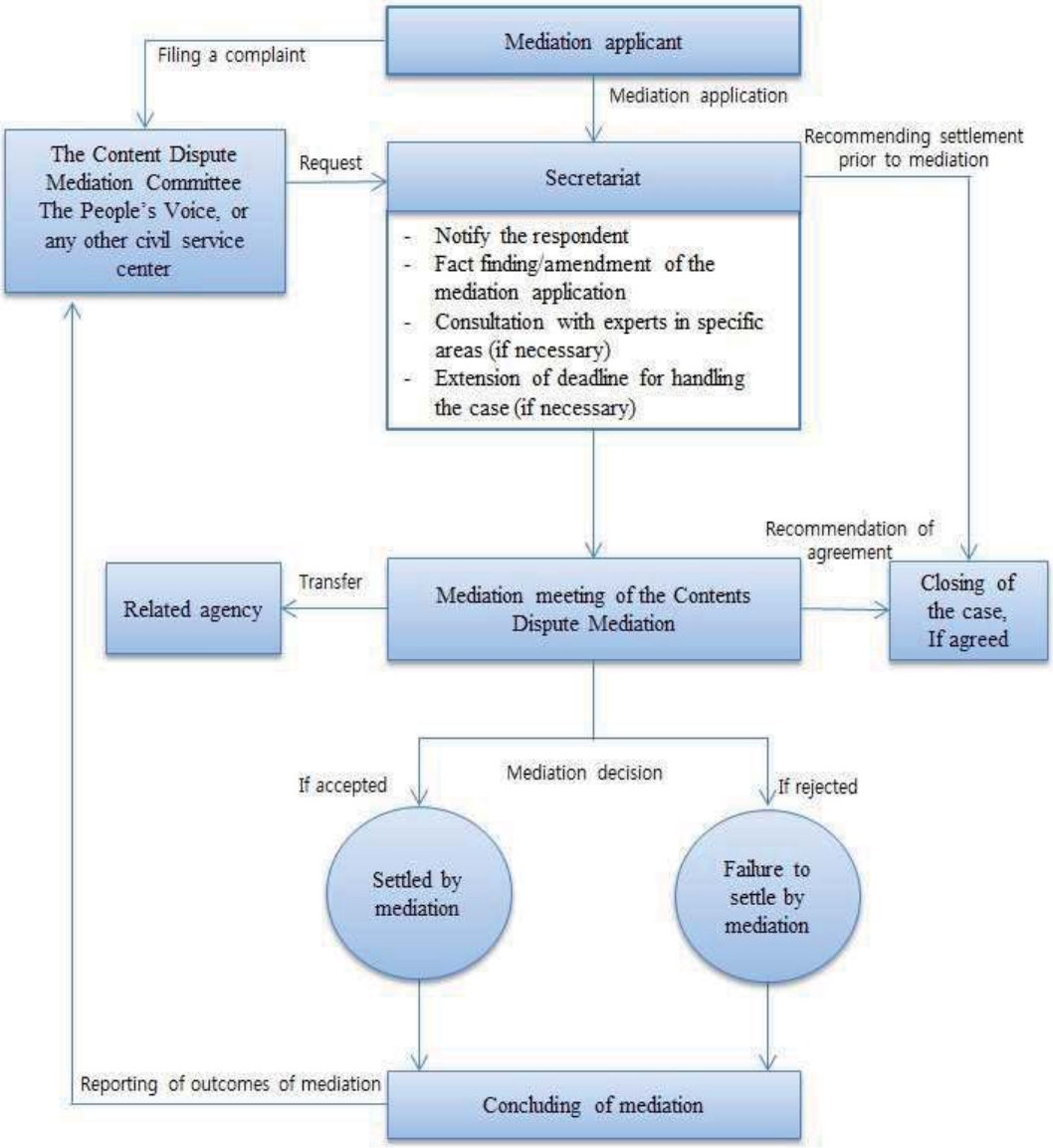
3) Dispute resolution procedure

The Mediation Committee is a mediation organization that deals with disputes arising between content providers, between a content provider and a user, and between users in connectin with the trading and use of contents. Every citizen may use the mediation system of the Committee in relation of a dispute about contents.

Upon receipt of a request for mediation in a contents-related dispute, the Mediation Committee requests the respondent to provide an answer, examines the answer, induces an amicable settlement between parties,

brings the case to a mediation hearing, with parties' consent thereto, and proposes a mediation agreement. If both parties accept the proposed mediation agreement, the written mediation award becomes as effective as a final judgment.[44)]

Procedure for Mediation by the Content Dispute Mediation Committee



44) Secretariat of the Content Dispute Mediation Committee, "the 2015 Collection of Mediation Case in Contents-Related Disputes," Sep. 2015, p. 135.

(7) Committee for Mediation of Disputes over Electronic Documents and Electronic Commerce

Administering authority	An institution affiliated to the National IT Industry Promotion Agency
Basis for establishment	Article 32 of the Framework Act on Electronic Documents and Transactions
Objectives of establishment	To mediate disputes arising from electronic documents and electronic transactions, to realize a sound environment for cyber based activity by establishing fair trade practices, to promote the use of documents and electronic transactions, and to facilitate the promotion of rights and interests of business entities and users.
Date established	Apr. 12, 2000
Organizational structure and composition	At least 15 but not more than 40 members (from legal circles, academia, business circles, consumer organizations, etc.), including one chairperson
Matters subject to dispute resolution	Disputes arising from electronic transactions, etc. between a business and a consumer (B2C), between consumers (C2C), and between businesses (B2B). (Examples) Disputes regarding a contract (denial of withdrawal of subscription, non-performance of terms and conditions of a contract, amendment of terms and conditions of a contract, etc.), delivery (delay in delivery, loss of goods, allocation of delivery expenses, etc.), or information about commodities (information about commodities, an error in the description of a price, etc.), electronic documents, electronic civil petitions to the government, etc.

Effect of dispute resolution	- An agreement is deemed made on the same terms and conditions as those of the mediation award; - Of the same effect as enforceable as a judicial compromise under the Civil Procedure Act.
Web-site	<http://ecmc.or.kr/ecmc/index.do>

1) Objectives of establishment

Owing to the trend of the expansion of e-business in various forms, the volume of electronic transactions has been increasing exponentially and the number of users has been rapidly increasing. Electronic transactions are advantageous to distributors in reducing transaction costs, including distribution and marketing, and to consumers in buying products at lower prices, whenever and wherever they desire, since transactions are made in cyber space without constraints of time and space. On the contrary, it is true that the possibility of disputes arising always exists due to the nature of non-face-to-face transactions, in which it is impracticable to ascertain actual conditions of traded commodities.

The Committee for Mediation in Disputes over Electronic Documents and Electronic Commerce is comprised of mediators appointed or commissioned from among experts in the fields related to electronic documents and electronic transactions from legal circles, academia, business circles, etc. The Committee was established for the purpose of improving systems for redressing consumers' losses and establishing a sound culture of electronic transactions and to mediate in disputes.

2) Organizational structure and composition

The Committee for Mediation in Disputes over Electronic Documents and Electronic Commerce is comprised of members appointed or commissioned by the Minister of Science, ICT and Future Planning from among the following persons, and the chairperson is elected by and from among committee members:

1. A person who serves or has served as at least associate professor or equivalent, in a university or an officially recognized research institute, majoring in a field related to electronic documents or electronic transactions;
2. A current or former, at least Grade-IV public official (including a public official in general service as a member of the Senior Civil Service) in an equivalent position in a public institution and who has experience in business affairs related to electronic documents or electronic transactions;
3. A judge, public prosecutor, or licensed attorney-at-law;
4. A person recommended by a not-for-profit non-governmental organization under Article 2 of the Assistance for Non-Profit, Non-Governmental Organizations Act;
5. Any other person who has knowledge and experience in electronic documents or electronic transactions or in mediation of disputes.

Meanwhile, committee members are non-standing, and the term of office of committee members is three years and may be renewed consecutively only once.

3) Dispute mediation procedure

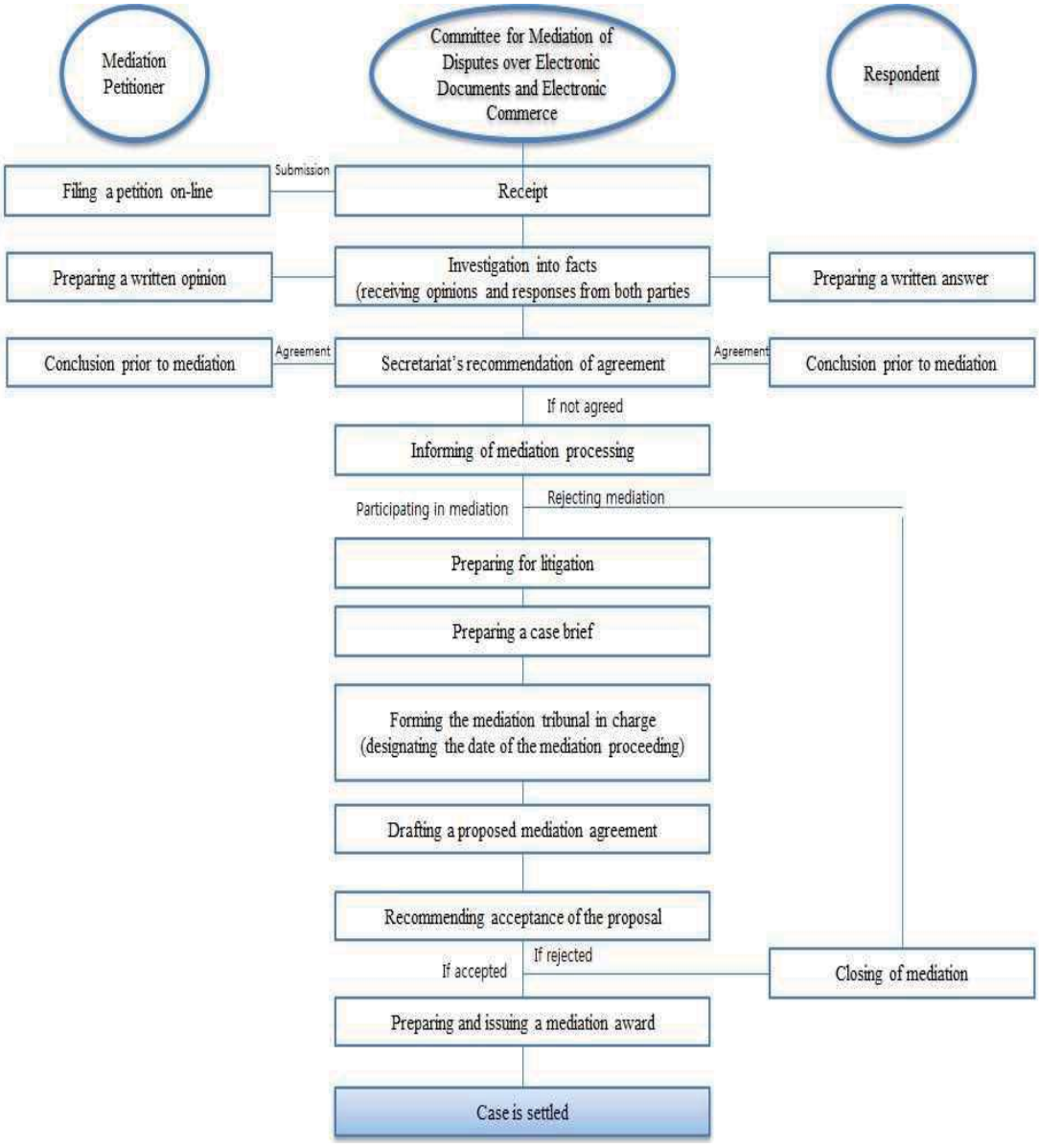
A person who seeks remedies for losses caused by an electronic document or an electronic transaction and wishes to settle the relevant dispute by mediation may file a petition for mediation of the dispute with the Committee, and the mediation is conducted by a mediation tribunal composed of not more than three committee members. However, mediation of a case in which the Committee resolves to mediate directly shall be conducted by the Committee.

Members of the mediation tribunal for each case are designated by the chairperson from among members of the Committee, but at least one person who falls under Article 32 (3) 3 the Framework Act on Electronic Documents and Transactions must be included. The Committee or a mediation tribunal must propose a mediation agreement within 45 days after the filing date of the petition for mediation of a dispute under Article 32 (1) of the aforementioned Act and must recommend the proposal to parties to the dispute. If the Committee intends to extend the deadline in extenuating circumstances, it shall give notice thereof to the parties, clearly stating grounds therefor and the deadline.

A proposed mediation agreement may include reinstatement, compensation for losses, and other measures necessary for redressing losses, to the extent that such measures do not contravene the objective of the petition.

Upon receipt of a recommendation of agreement, the parties must notify the Committee or the mediation tribunal as to whether they consent to the proposed mediation agreement within 15 days after they are served with the recommendation. If either party does not object within 15 days. In such cases, the parties are deemed to accept the proposal.

Procedure for Mediation by the Committee for Mediation in Disputes over Electronic Documents and Electronic Commerce



2. Status and Example Cases

Now we look into consumer disputes, disputes arising from unfair trade practices, environmental disputes, medical disputes, disputes about the press, content-related disputes, disputes about electronic transactions, concerning which relatively proactive activities have been conducted in Korea. The reason why these seven types of dispute are selected is that disputes arising in connection with consumers, unfair trade practices, medical services, environment, the press, contents, and electronic transactions are each connected with citizens' lives most extensively.

(1) Consumer Dispute Mediation Commission

1) Status

In 2015, 3,771 petitions for general dispute mediation and three petitions for class dispute mediation were filed.

During the preceding three years, 3,249 petitions were filed for general dispute mediation in 2013; 3,040 cases in 2014; and 3,771 cases in 2015; 731 cases more than the preceding year (an increase of 24.0%). Ten Petitions were filed for mediation in class dispute mediation in 2013 and 2014 respectively and three cases in 2015, seven cases less than the preceding year.

Cases Filed for Dispute Mediation

(Unit: Case, %)

Category	2013		2014		2015	
	General	Class	General	Class	General	Class
Cases	3,249	10	3,040	10	3,771	3
Increase/ decrease rate	76.5	-	△6.4	-	24.0	△70.0

Meanwhile, out of all cases filed for general dispute mediation, 1,200 cases were settled by mediation, and 309 cases were dismissed "without mediation" for lack of grounds for petition, while 67 cases was "transferred to a mediation hearing."

Furthermore, 1,021 cases was "pending for examination," 324 cases were closed by "voluntary withdrawal of the petition," 52 cases were closed by reason of "unable to process" due to an impossibility to contract either party, and 36 cases were "discontinued" due to either party's filing for a lawsuit.

Cases Handled by General Dispute Mediation1)

(Unit: Case, %)

Category	Cases closed										Pending for examination	Total
	Decided to mediate						Voluntarily withdrawn	Impossible to proceed	Discontinued	Others[4]		
	Mediated				No mediation[3]	Transferred to mediation meeting						
	Settled (settlement ratio[2])	Failed to settle	Impossible to proceed after mediation	Pending for settlement								
Cases received	1,200 (68.1)	562	20	177	309	67	324	52	36	3	1,021	3,771
Cases processed	1,653 (70.7)	685	34	166	431	133	482	84	47	7	15	3,737

1) The result might change because of cases still pending in 2016 among the cases filed in 2015.
2) Settlement ratio: {(Number of cases settled)/(Number of cases settled + Number of cases not settled) x 100. These results might vary based upon the results of the cases pending settlement and the cases pending examination.
3) This refers to the cases held ineligible for mediation for lack of grounds for the petitioner's petition.
4) This refers to the cases transferred or dismissed.

2) Example cases

○ A claim for compensation for loss incurred by the delay in operation of an airplane

[Summary of the dispute] A. The petitioners booked return air tickets with the respondent for a flight scheduled to depart from Incheon Air port and to arrive at Pudong Airport on March 5, 2015; and for a flight scheduled to depart from Pudong Airport at 14:30 (China local time) on March 8 of the same year and to arrive at Incheon Airport at 17:10 (Korea local time) on the same day. (Airfare: 190,000 won, Fuel Surcharge: 47,200 won, Airport Tax: 28,000 won in Incheon and 16,300 won in Pudong). B. The petitioners departed from Pudong Airport at 16:52 (China local time) on March 8, 2015 and arrived at Incheon Airport at 19:19 (Korea local time) on the same day by an airplane operated by the respondent (the airplane was actually operated by a third party called Shanghai Airlines under a code-share agreement; hereinafter, the “Airplane”).
[Outcomes of mediation] 1. The respondent was order to pay 11,000 won to each petitioner by July 10, 2015 2. If the respondent delays the payment under paragraph (1), the respondent shall pay interest at the rate of 6 percent per annum on the unpaid amount, as a penalty for the delay, from July 11, 2015 until the unpaid amount is fully paid.

(2) Korea Fair Trade Mediation Agency

1) Status

The number of cases filed for dispute medication with the Korea Fair Trade Mediation Agency increased by 74 cases to 2,214 cases in 2015

(up three percent) from 2,140 cases in 2014, and the number of cases closed increased by 234 cases to 2,316 cases (up 11 percent) from 2,082 cases in 2014.

The number of cases filed in regard to subcontracting disputes increased by 13 percent to 1,050 cases from 931 cases in 2014, taking the greatest number of cases, among the cases filed for various issues and followed by cases concerning franchise business (522 cases) and then those concerning fair trade (512 cases). Furthermore, the number of closed cases in regard to subcontracting increased by 18 percent to 1,069 cases from 909 cases in 2014, taking the greatest number of cases, among closed cases, and followed by 562 cases concerning fair trade and then 550 cases concerning franchise business.

Cases Filed and Closed for Dispute Mediation on each Type of Issue

(Unit: Case)

Category	Cases filed			Cases closed		
	2014	2015	Increase rate (%)	2014	2015	Increase rate (%)
Total	**2,140**	**2,214**	**3%**	**2,082**	**2,316**	**11%**
Fair trade	523	512	△2%	538	562	4%
Franchise	572	522	△9%	529	550	4%
Subcontracting	931	1,050	13%	909	1,069	18%
Distribution	38	37	△3%	39	37	△5%
Standard contract	76	93	22%	67	98	46%

Meanwhile, the average period taken to close a case was 36 days, shorter than the statutory period of 60 days.[45] The ratio of settlement by mediation reached 88 percent.

2) Example Cases

(ⅰ) Fair trade

○ A dispute arising from a financial company's failure to pay further contract consideration and for unfair treatment

[Summary of the dispute] · General construction company "A" signed a contract for the construction of a new building with financial company "B" and commenced construction works. · "A" completed additional works around May 2015 and asked "B" to pay the price therefor, but "B" evaded the payment deliberately.
[Outcomes of mediation] · The Mediation Agency found that "B's" failure to pay the price for additional works, without good cause, constituted unfair treatment by abusing its position in the transaction and deemed it just grounds to conduct the mediation proceedings. As a result, the case was settled by mediation whereby both parties agreed that "B" should pay "A" 1.8 billion won for additional works.

(ⅱ) Franchise business

○ A dispute arising from a food service franchisor's coercion to repair interior fitout

45) However, it is possible to extend the period to a maximum 90 days in franchise business, distribution, and standard form contract, if both parties to a dispute consent to the extension.

[Summary of the dispute] · Franchisee “A” had operated the store in this case pursuant to a franchise agreement with food service franchisor “B” around May 2004, but the store was partially damaged by fire around December 2014. · “A” intended to repair the interior only in the severely damaged part of the store, but “B” coerced “A” to fully repair the all interior fitout of the store. A dispute arose in the course of the works because the repair cost far exceeded initially estimated.
[Outcomes of mediation] · The Mediation Agency found that “B’s” coercion to repair the store constituted a complete abuse of its position in the transaction and presented a proposed mediation agreement under which “B” should pay “A” 39 million won, considering the additional cost borne by “A” for the works. This case was settled by mediation when both parties accepted the proposal.

(iii) Example cases concerning subcontracting

○ A dispute about a general construction company’s failure to pay a subcontract price

[Summary of the dispute] · Specialized construction company “A” completed steel-reinforced concrete works around December 2014 as ordered by general construction company “B” for the construction of an apartment building. · However, a dispute arose because “B” refused to comply with a request to settle the cost of the said works and failed to pay part of the construction cost.
[Outcomes of mediation] · The Mediation Agency conducted mediation, considering that “B’s” non-compliance with a request to settle the cost, without good cause, constituted

an unfair trade practice, and the case was settled by mediation on the term that both parties agreed that “B” should pay “A” 1.4 billion won.

(ⅳ) Transactions with a large retailer

○ A dispute arising from a large retailor’s reducing the price of goods

[Summary of the dispute]
· Clothing manufacturer “A” supplied T-shirts to large retailor “B Mart” pursuant to contract in November 2013.
· However, “B Mart” unilaterally reduced the quantity of goods to be supplied by “A” by half of the initially agreed quantity.

[Outcomes of mediation]
· The Mediation Agency found that “B Mart’s” unilaterally halving the quantity of goods to be supplied by “A” and the price for the goods, without good cause, constituted an unfair trade practice under the Large Retail Business Act. The Agency proposed a mediation agreement under which “B Mart” should pay “A” 360 million won. Both parties agreed to the proposal to settle the case by mediation.

(ⅴ) Standard form contract

○ A dispute arising from refusal to terminate a contract with a PC software service provider

[Summary of the dispute]
· Electronic commerce operator “A” had been provided with PC software service by PC software service provider “B” pursuant to a contract with “B” in early May 2013.

· "A" requested "B" to terminate the contract due to personal circumstances around November 2014, but "B" rejected the request pursuant to the terms and conditions of the contract, and claimed the payment of 50 million won as a service fee for the remaining contract period to "A."
[Outcomes of mediation] · The Mediation Agency conducted mediation on the basis that the contract in this case constituted an unfair standard form contract under the Act on the Regulation of Terms and Conditions because the provisions of the contract in this case denied "A's" right to terminate the contract. As a result, the case was settled by mediation on the term that both parties agreed that both parties should terminate the contract and "B" should not claim the service fee for the remaining contract period.

(3) Environmental Dispute Adjustment Commission

1) Status

Since its establishment in July 1991, the Environmental Dispute Adjustment Commission received 4,069 mediation petitions in total and closed 3,495 cases by December 2015 (adjudication, mediation, settlement by arbitration). During the preceding three years, the Committee received 708 cases and closed 638 cases. Further details are as follows:[46)]

46) Refer to statistics on the settlement, etc. of environmental disputes (as at Dec. 31, 2015) (final in February) in the web-site of the Central Environmental Dispute Adjustment Committee <http://ecc.me.go.kr>.

Application Filed for Environmental Dispute Resolution and Closed Cases

(Unit: Case, %)

Category	Cases filed			Cases closed				Intercession completed	Voluntary withdrawal	Pending (carried over)
	Total	Received	Carried over from last year	Total	Arbitration	Mediation	Settled by arbitration			
Total	-	**708**		**638**	**519**	**23**	**96**	**12**	**61**	-
2015	**349**	**215**	**134**	**210**	**169**	**7**	**34**	**2**	**26**	**111**
2014	402	260	142	237	186	11	40	3	28	134
2013	347	233	114	191	164	5	22	7	7	142

2) Example cases

(ⅰ) Noise, vibrations

○ A dispute over damage to buildings and mental injury caused by noise, vibration, and dust from an apartment complex construction site in a District in Seoul (Environmental Dispute Adjustment Commission Case No. 14-3-110)[47]

47) The Central Environmental Dispute Adjustment Committee, “The 2015 Collection of Environmental Dispute Mediation Cases (Volume 24), Jul. 2016, pp. 12-19.

[Summary of the case]
· In this case, 91 residents of an apartment complex in a District in Seoul and a development company claimed payment of 1,087,500,000 won in total as compensation for injuries, against a construction company and a housing redevelopment and improvement project association, alleging that they sustained damage to buildings and mental injury due to noise, vibration, and dust from the neighboring apartment complex construction site during the period from October 2011 to the filing date of the petition for adjudication (May 14, 2014).

[Proposed settlement]
· The respondent construction company shall pay 74,962,370 won in total to 67 petitioners and the development company; and shall pay late payment penalty interest at a rate of 20 percent per annum on the afore-mentioned amount for the period from the day immediately after each respondent is served with an authenticated copy of the written settlement, until paid in full.

(ⅱ) Air pollution

○ A dispute over mental injury caused by noise and air pollution from a factory in Gyeonggi Province (Environmental Dispute Adjustment Commission Case No. 12-3-238)[48)]

[Outcomes of the case]
· In this case, nine residents of Gyeonggi Province claimed payment of 160 million won as compensation for injury to a company, alleging that the sustained mental injury due to noise and air pollution caused by the company's foundry in the neighborhood, during the period from March 2012 (when the factory began its operations) until December 18, 2012 (the filing date of the petition for adjudication.)

48) The Central Environmental Dispute Adjustment Committee, "The 2015 Collection of Environmental Dispute Mediation Cases (Volume 24), Jul. 2016, pp. 997-1004.

[Proposed adjudication]
· The respondent shall pay a total amount of 1,354,050 won to three petitioners as detailed as set in the attached table and shall pay an additional amount for late payment at the rate of 15 percent per annum from the day immediately after the respondent is served with an authenticated copy of the written adjudication, until paid in full.

(iii) Water pollution

○ A dispute over the interruption of business and killing of fish caused by water pollution in the road construction site in Gyeongsangbuk-do (Environmental Dispute Adjustment Commission Case No. 14-3-226)[49)]

[Summary of the case]
· The petitioner who operates a paid fishing pond in a rural area of Gyeongsangbuk-do claimed payment of 116 million won to the project owner and contractor of a national road construction project as compensation for interruption of business of the fishing pond and the killing of fish due to the inflow of muddy water from the construction site into the water reservoir during the period from March 2014 to the filing date of the petition for adjudication.

[Proposed adjudication]
· The respondent construction company shall pay a total amount of 7,585,180 won to the petitioner and shall pay an additional amount for late payment at the rate of 20 percent per annum from the day immediately after the respondent is served with an authenticated copy of the written adjudication, until paid in full.

49) The Central Environmental Dispute Adjustment Committee, “The 2015 Collection of Environmental Dispute Mediation Cases (Volume 24), Jul. 2016, pp. 1074-1084.

(ⅳ) Interruption of Sunlight

○ A dispute over damage to agricultural produce caused by interruption of sunlight by a railroad bridge in Gyeongsangbuk-do (Environmental Dispute Adjustment Commission Case No. 14-3-230)[50]

[Summary of the case] · The petitioner who grows Korean dates on two parcels of land in Gyeongsangbuk-do claimed payment of 42 million won as compensation for loss on the production of Korean dates against a public corporation, alleging that the loss was caused by interruption of sunlight by a nearby railroad bridge during the period from January 2004 to the filing date of the petition for adjudication (Nov. 14, 2014).
[Proposed adjudication] · The respondent public corporation shall pay a total amount of 5,713,300 won to the petitioner and shall pay an additional amount for late payment at the rate of 20 percent per annum from the day immediately after the respondent is served with an authenticated copy of the written adjudication, until paid in full.

(4) Korea Medical Dispute Mediation and Arbitration Agency

1) Status

As a result of mediation and arbitration conducted by the Korea Medical Dispute Mediation and Arbitration Agency in 1,822 cases, out of 2,153 cases for which mediation or arbitration proceedings commenced after the establishment of the Agency in April 2012. It has been closed with respondents' participation, except 331 voluntarily withdrawn or dismissed

50) The Environmental Dispute Adjustment Committee, "The 2015 Collection of Environmental Dispute Mediation Cases (Volume 24), Jul. 2016, pp. 1095-1101.

cases, 79.4 percent of these cases (1,446 cases) were settled, including 66.8 percent of these cases settled by an agreement, 12.3 percent of these cases were settled after a mediation decision was made, and 0.3 percent of these cases were settled by an arbitration award. The ratio of cases closed by agreement between parties during the proceedings (66.8 percent), out of such cases, was much higher than other cases. However, even where the Medical Arbitration Agency made an *ex officio* decision because of parties' failure to make an agreement during the mediation proceedings, the ratio of cases settled by consent of both the petitioner and the respondent (60.1 percent) was higher than the ratio of the rest of cases (unresolved cases were 39.9 percent).

Medical Disputes Handled for Mediation or Arbitration Each Year

(As at the closing date; Unit: Case, %)

Cate-gory	Total	Arbi-trated	Agreed	Mediation decision			Media tion failed	With-drawn	Dismi-ssed
				Sub-total	Settled	Unre-solved			
Total	2,153 (100.0)	5 (0.2)	1,217 (56.5)	373 (17.3)	224 (60.1)	149 (39.9)	227 (10.5)	293 (13.6)	38 (1.8)
2012	112	1	43	48	29	19	8	12	-
2013	462	-	270	94	58	36	60	30	8
2014	827	3	441	170	107	63	81	116	16
2015	752	1	463	61	30	31	78	135	14

Meanwhile, the average period for handing a case in 2015 was extended by 4.4 days, compared with the period in the preceding year, and has

been increasing gradually, and the average period for closing a mediation proceeding since the establishment of the Agency is 83.6 days.[51)]

The ratio of cases settled by mediation in 2015 increased drastically to 94.1 percent by 4.4 percent more than the ratio in the preceding year (2014), and the cumulative ratio of cases settled by mediation since the establishment of the Agency is 90.6 percent.

Period Taken to Conclude Mediation
and Ratio of Cases Settled by Mediation Each Year

(As on the closing date; Unit: Case, %)

Category	Accumulated cases	2012	2013	2014	2015
Average period for concluding a case	83.6	73.5	79.7	83.3	87.7
Ratio of cases settled by mediation	90.6	79.1	90.1	89.7	94.1

2) Example cases

○ A case where spinal disc herniation was worsened after treatment by Chuna manual therapy

51) The statutory deadline for concluding a case is 90 days from the filing date, but a case may be closed in an maximum 120 days upon a 30-day extension.

[Summary of the case]

· The petitioner claimed payment of 10 million won as compensation for injury caused by unreasonable impelementation of Chuna therapy by the rsespondent, an oriental medicine doctor. The petitioner alleged that the therapy rapidly worsened pain and caused spinal disc herniation and complications and that the petitioner had to undergo surgical operations, including resection of discs affected by spinal disc herniation. The respondent admitted that pain was aggravated after Chuna therapy by the respondent and that Chuna therapy was one of causes of the petitioner's spinal disc herniation given that symptoms appeared in the opposite side, although the petitioner had a historical history of spinal disc herniation even before the petitioner came to the respondent's clinic.

[Main issues]

· Whether Chuna therapy was provided negligently and whether a causal relationship exists between this and the injuries.

[Outcomes of the proceeding]

· Settled by mediation (mediation award)

The mediation tribunal explained medical and legal issues, including outcomes of assessment, to the parties. The case was settled as follows, as the respondent wanted to pay a solatium based upon ethical liability, and the petitioner accepted the respondent's proposal.

· The respondent must pay 1,800,000 won to the petitioner, and the petitioner shall not raise any further objection in connection with the medical treatment in this case.

(5) Press Arbitration Commission

1) Status

(i) Handling of Mediation Petitions

The Press Arbitration Commission received and handled 5,227 mediation cases during 2015. The total number of petitions decreased by 13,821

cases to 1,908 cases in 2015, compared with 16,117 cases filed in 2014, but the cause of the decrease was the significant reduction of large-scale cases.[52)]

The number of cases other than large-scale cases (hereinafter, "ordinary cases") increased by 13.2 percent to 3,319 cases, compared with 2,931 cases in 2014, broke all previous records. Out of 5,227 medication cases in 2015, including 1,908 large-scale cases, 2,904 cases were voluntary withdrawn (55.6 percent), 940 cases were settled by mediation (18.0 percent), 710 cases failed to be settled by mediation (13.6 percent), 322 cases were dismissed (6.2 percent), 319 cases were settled by making an *ex officio* mediation decision (6.1 percent), and 32 cases were dismissed (0.6 percent).

In particular, most of large-scale cases (1,645 cases) were voluntarily withdrawn, taking the largest part out of all cases. The ratio of cases relieved from injury in 2015 was 77.9 percent, 10.8 percent point lower than the ratio of cases relieved from injuries in 2014 (88.7 percent). However, the ratio of cases relieved from injuries in 2014 was exceptionally high due to large-scale cases, and the ratio of cases relieved from injury in 2015 is similar to 77.6 percent in 2013.

Meanwhile, the number of ordinary cases filed with the Commission, except large-scale cases, increased by 388 cases to 3,319 cases, compared to the number of cases filed in 2014, out of which 934 cases were settled by mediation, and 1,008 cases were relieved from injury, out of the cases voluntarily withdrawn.[53)]

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52) The Korea Medical Dispute Mediation and Arbitration Agency, "The 2015 Annual Report of Statistics of Mediation and Arbitration in Medical Disputes," Ap. 2016. pp. 24-25.

53) The Korea Medical Dispute Mediation and Arbitration Agency, "The 2015 Annual Report of Statistics of Mediation and Arbitration in Medical Disputes," Ap. 2016. pp. 30-31.

Medication Cases by Year

	Number of cases filed	Results							Ratio of cases relieved from injuries (%)
		Settled by mediation	*Ex officio* mediation decision		Failure to settle by mediation	Dismissed on merits	Dismissed on a procedural ground	Voluntarily withdrawn	
			Accepted	Rejected					
2013	2,433	916	54	57(2)	295 (14)	20	2	1,089 (884)	77.6%
2014	19,048	1,156	133	122 (3)	1,105 (16)	106	76	16,350 (15,420)	88.7%
2015	5,227	940	218	101 (2)	710(4)	322	32	2,904 (2,633)	77.9%

(ii) Handling of Arbitration Petitions

The number of petitions filed for arbitration after the introduction of the arbitration system in 2005 was lower than expected, as seven cases were filed in 2006, 14 cases in 2007, and ten cases in 2008. However, since 2009 when the Press Arbitration Act was amended to include portal service providers, online press companies, and other Internet news service providers in entities subject to mediation and arbitration, the Commission exerted multilateral efforts in order to promote the arbitration system.

As a result, the number of petitions filed for arbitration remained higher than before; 111 cases in 2009, 113 cases in 2011, and 190 cases in

2013; but the number of petitions for arbitration has decreased sharply during the latest two years; 11 cases in 2014 and 26 cases in 2015.

In general, arbitration is used actively in the areas where a basic legal relationship is established or formed between parties to a dispute before the dispute arises, but there are some factors that make it difficult to promote arbitration in disputes regarding the press, because there is almost no room for the formation of any kind of legal relationship between parties in such cases.

Meanwhile, most petitions filed for arbitration tend to concentrate mainly on cases where the possibility of a dispute over facts is relatively low or cases where similar reports have been made simultaneously by several Internet media.

<Arbitration Cases by Years>

	Petitions filed	Results							Ratio of cases relieved from injuries (%)
		Arbitration award	Settled by compromise through arbitration		Dismissed on merits	Dismissed on a procedural ground	Voluntarily withdrawn	Pending	
2013	190	188	2						
2014	11	8					3		
2015	26	26							

2) Example cases

(ⅰ) Corrective reports

In an entertainment program broadcast on the theme "standards that women in their 20s apply in judging men," a press company "A" reported that the petitioners, ordinary citizens who appeared in the program, attached importance to educational background and financial means, such as "a foreign car" and "annual pay of 50 million won," as conditions of male partners. However, the petitioners claimed that the respondent should make rectifications and compensate them for their loss of reputation, arguing that such remarks were broadcast as if they were true, although they had made such remarks upon the producer's direction, and they are severely blamed for the remarks by people. As a result of a hearing, the case was settled by mediation on the condition that the petitioners' arguments should be broadcast by way of rectification.

(ⅱ) Reports of objections

A press company "B" reported that an official of a detention center in Seoul discriminated against detainees on the grounds of wealth and social status even inside of the correctional facility in which sentences should be executed fairly, raising a suspicion that the official had accorded special favor to some detainees. However, the petitioner claimed reports of an objection, arguing that the petitioner had never accorded special favors, and the arbitration tribunal held that the petitioner's argument was well founded and, ex officio, decided to require the respondent to publish reports of the objection. The decision became final and conclusive with consent of both parties.

(iii) Follow-up reports

A press company reported that parents of a child noticed bruises on the body of the child who had been in a chid-care center and that the police were investigating the case upon receipt of a report from the parents. Later on, the petitioner required follow-up reports, contending that the police concluded that the petitioner was free from suspicion as a result of investigation, and the case was settled by mediation after hearings.

(iv) Compensation for injury

Reporting a story about foreigners' adaptation to Korean society, a broadcasting company "D" published an image of the security guard who worked in their residence. The petitioner claimed compensation for injury, arguing that the petitioner did not consent to photographing and reporting his photo and his privacy was invaded by the disclosure of his job as a security guard. As a result of hearings, the arbitration tribunal recognized the petitioner's injuries and, ex officio, made a decision that the respondent should pay three million won as damages. The decision became final and conclusive with consent of both parties.

(v) Arbitration

An Internet newspaper "A" reported that the trade union of a broadcasting company "B" alleged that it was found that key officers of the broadcasting company "B," including the head of the Legal Affairs Team, the head of the Audit Team, and the head of the News Department, had been involved in illegal investigations by government authorities, around July 2010 when a scandal broke out in connection with illegal investigations of ordinary citizens by the Office of the Director General for Assistance in Ethics of Public

Officials. Against the report, the petitioner, key officers of the broadcasting company "B," filed a petition for arbitration, seeking follow-up reports, arguing that they were found free from suspicion of destruction of evidence and other crimes for which the trade union filed a criminal complaint against the petitioners, as a result of investigations by the public prosecution, after making a prior agreement with the Internet newspaper that the parties would accept the Commission's decision. The arbitration tribunal held that the Seoul Central District Prosecutors' Office held on April 16, 2015 that the petitioners were free from suspicion with regard to the criminal complaint filed by the trade union on the destruction of evidence and other crimes related to illegal investigations in the broadcasting company "B" by referring to the notice of grounds for non-prosecution for the relevant criminal case, which was submitted by the petitioners, and that the Internet newspaper "A" owed a duty to publish follow-up reports that the petitioners were held free from suspicion of all alleged crimes related to illegal investigations in the broadcasting company "B" and issued an arbitration decision that the respondent should publish such follow-up reports, taking into consideration the parties' arguments and agreements, mutual interests, the methods of reporting the news subject to arbitration, etc.

(6) Content Dispute Mediation Committee

1) Status

The Mediation Committee received and examined 626 mediation petitions in 2011, 3,445 cases in 2012, 5,210 cases in 2013, and 3,550 cases in 2014.

Out of the disputes, 602 disputes between a content provider and a user (B2C) were filed in 2011, 3,410 cases in 2012, 5,060 cases in 2013, and 3,374 cases in 2014, taking a much larger part than disputes between content providers (B2B), which were filed for 14 cases in 2011,

27 cases in 2012, 127 cases in 2013, and 155 cases in 2014, respectively. For reference, the ratio of B2C cases to all cases filed with the Committee was approximately 95 percent, the ratio of B2B cases was approximately four percent, and the ratio of disputes between users (C2C) was less than one percent in 2014. However, the number of disputes between content providers (B2B), which were filed with the Mediation Committee, has been constantly increasing.

Content-Related Disputes Closed by Mediation in 2011 to 2014

Category	Petition filed				Outcomes of mediation								
	B2C	B2B	C2C	Total	With-drawn	Rejected	Transferred	Impossible to mediate	Un-resolved (1)	Agreed prior to mediation	Results		Total
											Settled	Un-resolved (2)	
2011	602	14	10	626	36	60	4	0	123	316	80	7	626
2012	3,410	27	9	3,445	343	465	54	0	502	2,056	12	13	3,445
2013	5,060	127	23	5,210	1,068	326	131	330	740	2,502	69	44	5,210
2014	3,374	155	21	3,550	650	364	106	129	763	1,430	63	45	3,550
Total	12,446	323	62	12,831	2,097	1,215	295	459	2,128	6,304	224	109	12,831

* Rejected: Cases that the Secretariat of the Mediation Committee rejected the mediation petition because the relevant case was pending in court, a mediation petition has been filed with another institution, alleged facts are incorrect, or the petitioner lacked standing.

* Transferred: Cases transferred to the relevant institution because the case is not related to subject-matter. In such cases, the petitioner is notified of the institution to which the mediation petition is transferred and grounds therefor.
* Impracticable to mediate: If the whereabout of either party is unknown, if it is impracticable to contact either party, or if it is impracticable to continue mediation proceedings due to permanent closure or bankruptcy of the respondent, the case is closed, and parties are notified accordingly.
* Unresolved (1): Cases closed because either party files a lawsuit during the mediation proceedings, refuses to attend the mediation hearing, or does not participate in the mediation proceedings.
* Unresolved (2): Cases closed because either party refuses to accept a proposal mediation agreement or parties fail to make a mediation agreement.

2) Example cases

(i) Game products

A claim for the return of a down payment following the cancellation of a contract for outsourced development of a game product

[Summary of the case]

The petitioner and the respondent signed a contract for the ou tsorced development of a game product. According to the contract, the respondent required to supply a finished game product and the petitioner was required to pay 35 million won in installments as the price therefor. The installments to be paid were 15 million won as a down payment for the first milestone, ten million won as an intermediate payment after the second milestone, and ten million won after the third and final milestone, upon release of the developed game product to the market.

The petitioner paid 15 million won to the respondent as a down payment on the date of contract and then paid ten million won as the intermediate payment for the second milestone in advance, considering the responden's financial situation, although the first development had not been completed.

However, the respondent failed to complete the development of the game product even after the deadline for the completion of the project under the contract. The petitioner notified the respondent of the cancellation of the contract for the breach of the contract. In addition, the petitioner claimed the return of 25 million won already paid for the restitution of *status quo ante* by exercising the right to cancel the contract.

[Proposed mediation agreement]

The parties were required to confirm that the contract made by and between the parties for outsourced development has been cancelled. The respondent was required to pay ten million won to the petitioner and late payment penally interest at the rate of 20 percent per annum, if the respondent delays the payment. The petitioner shall return source codes to the respondent and shall confirm that rights to source codes resides in the respondent. The petitioner and the respondents own copyrights they have respectively. Neither the petitioner nor the respondent shall raise any further dispute in connection with the contract .

As a result of mediation, the parties accepted the proposed mediation agreement.

(ii) Video products

A claim for the price of music for mobile services provided under a service contract

[Summary of the case]

The petitioner is a company engaging in the editing, production, etc. of music for advertising, and the respondent is a company engaging in the development and supply of software, advertising agency, and event agency. The petitioner provided sound sources for 71 songs to the respondent for a mobile service promoted by the respondent. When the petitioner requested the respondent to pay the price for the sound sources, the respondent refused to pay the price by reason that the sound sources were provided by the petitioner at random. And the petitioner filed a claim for payment of 86,020,000 won as the price for providing the sound sources against the respondent.

[Proposed mediation agrement]

The respondent shall pay 44 million won to the petitioner in installments but shall pay late payment penalty interest at the rate of 20 percent per annum, if the respondent delays the payment. The parties were required to confirm that the copyright in the sound sources for 71 songs provided in this case shall reside with the petitioner and that the respondent may continue to use the sound sources already provided to the respondent, free of charge. The petitioner shall waive the remainder of the claim and shall not raise any further complaint or claim, civil or criminal, in connection with the contract for the supply of sound sources in this case.

As a result of mediation, the parties accepted the proposed mediation agreement.

(iii) Knowledge information

A claim for compensation for the losses due to breach of a contract for production of a mobile phone application for publicity

[Overview of the case]

The petitioner and the respondent made a contract on the production of an application for publicity. The parties agreed that, if the petitioner develops a web-site, the respondent would convert the web-site into a mobile phone application version. In the course of the project, the petitioner paid five million won as the total product cost to the respondent.

However, the respondent failed to complete production of the application even after the lapse of the contactually agreed period. The petitioner notified the respondent of the cancellation of the contract and filed a claim for the return of the five million won already paid as consideration and for compensation for losses.

[Proposed mediation agreement]

The respondent must pay 2,750,000 won to the petitioner and shall pay late payment penalty interest at the rate of ten percent per annum, if the respondent delays the payment.

As a result of mediation, the parties accepted the proposed mediation agreement.

(iv) Characters, etc.

A claim for compensation for the losses from the breach of an exclusive contract with a singer

[Summary of the case]

The petitioner engages in the business of producing and planning music records, and the respondent worked as a singer, composer, and producer for the petitioner under an exclusive contract in return for an advance payment of three million won for the exclusive contract. The respondent had been trained in an educational institute operated by the petitioner on a regular basis and produced the first digital single album to release songs to the market.

However, while preparing to release the second album, the petitioner admonished the respondent several times for the respondent's insincerity in training classes and neglecting homework. One day after they were offended with one another, the petitioner yelled at the respondent, "Stop coming here from tomorrow," and the respondent walked out right away.

Subsequently, the respondent sent a letter by certified mail, claiming "the exclusive contract between the parties was cancelled by mutual agreement," and did not attend any further training classes. However, the petitioner filed a claim for the payment of 30 million won as compensation for the losses incurred by the breach of the exclusive contract (including the return of the advance payment for the exclusive contract, lesson fees, the cost of producing the album, and the compensation for losses incurred by the consequential termination of a contract with a third-party company for the distribution of music records), arguing that the contract had never been terminated.

[Proposed mediation agreement]

The respondent must pay 7 million won to the petitioner in installments. If the respondent delays the payment, the installment payments shall

become due immediately, and the respondent shall pay late payment penalty interest at the rate of 20 percent per annum. The petitioner waives all remaining claims. Neither the petitioner nor the respondent shall hold the other party liable, civilly or criminally, in relation to this case after this agreement becomes effective.

As a result of mediation, the parties accepted the proposed mediation agreement.

(7) Committee for Mediation in Disputes over Electronic Documents and Electronic Commerce

1) Status

In 2014, 3,382 petitions for dispute mediation with the Committee for Mediation in Disputes over Electronic Documents and Electronic Commerce was filed, being 49.9 percent less than the 6,756 cases in the preceding year. Such decrease was caused by the rapid decrease in the number of petitions for dispute mediation of content-related services, such as sound sources and video products.

2,165 petitions (64.0 percent) for dispute mediation in 2014 was handled, excluding 1,217 cases (36.0 percent), such as cases where the petition was withdrawn, cases impractical to mediate, and cases transferred to another institution. The number of cases where the mediation proceeding was closed by an agreement between the parties according to the Secretariat's recommendation of an agreement prior to the formation of a mediation tribunal was 1,787 cases, being 82.5 percent of the entire cases eligible for mediation, taking the largest part of such cases. The number of cases where a mediation proceeding is closed after the formation of a mediation

tribunal was 31 cases (1.4 percent),[54] while the number of cases where it was impracticable to continue mediation proceedings due to either party's refusal to participate in the mediation proceedings was 347 cases (16.0 percent).

2,165 cases were eligible for dispute mediation, 50.1 percent less than the 4,341 cases in the proceeding year. In 1,814 cases, parties reached agrement according to the Secretariat's recommendation and some cases were settled by mediation, being 51.7 percent less than the similar cases in the preceding year. The number of cases where a dispute was not settled by amicable agreement and cases where a dispute was not settled because of either party's refusal to participate in mediation proceedings was 351 cases, decreased by 39.8 percent year on year.

316 cases was impractical to continue mediation of a dispute due to the impracticability to contact either party to a dispute, the closure of the relevant web-site, or any other reason, a drastic decrease of 62.2 percent less than such cases in the preceding year. Furthermore, the number of cases where a petition for dispute mediation was voluntarily withdrawn by reason that the parties to a dispute reached amicable agreement after filing a petition for dispute mediation, that a dispute was resolved through a mediation petition filed with another mediation institution, or that two or more petitions were filed for one case was 848 cases, 42.6 percent less than such cases in the preceding year.

54) Ten cases of disputes arising from a "system error" was filed, taking the largest part of disputes filed for mediation; seven cases was filed for disputes about "cancellation of a contract or return of goods and refund" and "a defect in goods," respectively; two cases filed for disputes about "amendment or non-performance of a contract" and "delivery," respectively; and one case was filed for disputes about "an error in information about commodities," "false or exaggerated advertisement," "dissatisfaction with service," respectively (The National IT Industry Promotion Agency, "The 2015 Collection of Disputes Mediated in Electronic Commerce," Oct. 2015, p 59).

Furthermore, 53 petitions (1.6 percent) were filed for mediation in a dispute arising in connection with on-line games or contents, and such cases were transferred to the Content Dispute Mediation Committee, etc.

Trends in Dispute Mediation Petitions and Ratio of Resolved Disputes

Category		2010	2011	2012	2013	2014	Increase or decrease	
							Cases	%
Petitions filed for mediation		4,521	4,546	5,596	6,756	3,382	-3,374	-49.9
Petitions withdrawn		290	367	920	1,477	848	-629	-42.6
Impossible to mediate/ Others*		924	791	777	835	316	-519	-62.2
Transferred to others		159	384	351	103	53	-50	-48.5
Disputes mediated		3,148	3,004	3,548	4,341	2,165	-2,176	-50.1
Disputes settled	Closed by agreement	2,586	2,527	3,029	3,729	1,787	-1,942	-52.1
	Mediation agreement accepted	24	20	21	29	27	-2	-6.8
	Subtotal	2,610	2,547	3,050	3,758	1,814	-1,944	-51.7

Category		2010	2011	2012	2013	2014	Increase or decrease	
							Cases	%
Disputes unsettled	Mediation agreement not accepted	19	9	7	8	4	-4	-50.0
	Mediation proceeding rejected	519	448	491	575	347	-228	-39.7
	Subtotal	539	457	498	583	351	-232	-39.8
Ratio of settled disputes**		82.9%	84.8%	85.9%	86.6%	83.8%	-	-2.8

* Cases impractical to mediate (due to impracticability to contact either party, the closure of a cyber mall, etc.), other cases (vagueness of arguments, disputes not regarding electronic commerce, etc.)

** The ratio of settled disputes: (Cases closed by agreement + Cases where a mediation agreement was accepted)/Mediated disputes

2) Example cases

[Summary of the case]

The petitioner “A” (hereinafter, “petitioner”) placed an order for a camera (model name: DSC-QX100) at a web-site (www.○○○○.co.kr) operated by

the respondent called “B” (hereinafter, “respondent”) on January 3, 2014 and paid 269,000 won as the price for the product.

Noticing an unusually increasing number of orders for the same model in the afternoon that day, the respondent found that the employee in charge mistakenly noted the discounted price for another model (DSC-QX10) for a special event, as the price for the afore-mentioned model and requested the petitioner to cancel the order.

However, this dispute arose when the petitioner rejected the respondent’s request and demanded delivery of the product.

[Outcomes of mediation]

The Committee found that it was reasonable for the petitioner to cancel the purchase and for the respondent to refund the payment therefor. However, there was no negligence on the part of the petitioner in believing that the price was the discounted price for the camera in this case and it was reasonable to hold that the petitioner had suffered from mental distress because the petitioner has not been able to purchase the product as desired for more than three months since the case arose and had to prepare various documents for mediation in the dispute because of the respondent’s negligence. Therefore, the Committee holds that it is reasonable that the respondent should deliver a coupon of 60,000 won, equivalent to ten percent of the price for the relevant camera, which can be used in the relevant web-site, as compensation for the respondent’s fault.

Ⅲ. Private ADR

In Korea, the mediation system implemented by the Korean Commercial Arbitration Board can be said to be the only private mediation system. Thus, we look into the Korean Commercial Arbitration Board in the following:

1. Operational Structure and Composition

Administering authority	Ministry of Trade, Industry and Energy (an incorporated association)
basis for establishment	The Arbitration Act, the Foreign Trade Act, the Trade Infrastructure Development Act, the Special Act on Designation and Management of Free Economic Zones
Objectives of establishment	To establish order in commerce and improve benefits of citizens by resolving or preventing disputes in domestic and overseas commercial transactions.
Date established	Mar. 22, 1966
Organizational structure	Head office (2 divisions, 3 centers, 1 office) and 1 branch office (Busan Branch)
Matters subject to dispute resolution	<Arbitration> - Most legal disputes can be resolved by arbitration, and not only disputes between companies but also disputes involving the government, a local government, or an individual are included in disputes eligible for arbitration. * Complicated cases where expert determination is required (construction, finance, joint investment, etc.); cases where prompt resolution is crucial for business (IT, intellectual property, labor affairs, etc.); international investment and international transactions where a foreigner is involved (international trade, marine transport, overseas investment, inter-Korean trade, etc.); cases where the protection of trade secrets are essential (technology, entertainment, etc.)

	<Mediation> - Legal disputes that have arisen or are likely to arise from a contract between parties or any other legal matter * General civil and commercial disputes regarding sale and purchase, supply of goods, construction, maritime affairs, international trade, insurance, entertainment, medical services, real estate, etc. - The scope of disputes eligible for mediation is broader than that of administrative mediation. * The scope of matters subject to mediation of a dispute is all-inclusive, and thus all disputes subject to civil conciliation, domestic conciliation, and administrative mediation are eligible for mediation. <Intercession> - Legal disputes that have already arisen or are likely to arise from a contract between parties or any other legal matter * Transactions of goods, agency, transportation, investment, industrial property, construction services, transactions of real estate, and others (disputes arising from domestic or overseas commercial transactions)
Effect of dispute resolution	The mediator cooperates with parties to a dispute so that they can resolve the dispute amicably. - The mediator must mediate a dispute impartially and objectively in accordance with the principle of equity and good faith, taking into consideration business practices between the parties, circumstances related to the dispute, etc. - The mediator may propose a mediation agreement to parties, orally or in writing, at any time.

	- The mediator must maintain impartiality and independence in mediation. - If the mediator finds that any cause or event is likely to create a doubt as to his or her impartiality or independence, he or she must notify the Secretariat of the cause or event promptly. - Upon receipt of such notice from the mediator, the Secretariat must notify parties to the relevant dispute thereof immediately. - Immunity of the mediator: The mediator (including the Secretariat) is immune from legal liability for his/her conduct related to mediation proceedings, unless the mediator is involved in fraud or any other serious crime.
Web-site	<http://www.kcab.or.kr/intro.jsp>

(1) Objectives of establishment

The Korean Commercial Arbitration Board is a statutory, permanent arbitration institution established to prevent disputes arising in domestic or overseas commercial transactions and to promptly and impartially resolve disputes that have already arisen, through arbitration, mediation, and intercession.

The Board is the most active institution, among domestic ADR institutions engaging in disputes arising from commerce, and carries out arbitration, mediation, and intercession.

(2) Organizational structure and composition

In order for a person to take charge of mediation, the person must be commissioned from among persons who meet specified criteria for qualification

and registered in the list of mediators of the Korean Commercial Arbitration Board. A mediator is not a judge but must play a role to facilitate dialogue between parties to a dispute and assist the parties in finding their own solutions for the dispute.

A person who has a legal or economic interest in any outcome of mediation is not allowed to serve as mediator. However, such person may serve as mediator, if a party is aware that the mediator is in such a situation but does not raise any objection thereto.

The mediator must cooperate with parties to a dispute so that they can resolve the dispute amicably and mediate the dispute impartially and objectively in accordance with the principle of equity and good faith, taking into consideration business practices between the parties, circumstances related to the dispute, etc. The mediator may propose a mediation agreement to parties, orally or in writing, at any time.

The mediator must maintain impartiality and independence in mediation, and if the mediator finds that any cause or event is likely to create a doubt on his or her impartiality or independence, he or she must notify the Secretariat of the cause or event promptly. Upon receipt of such notice from the mediator, the Secretariat must notify parties to the relevant dispute immediately. The mediator is immune from legal liability for his or her action or inaction related to mediation proceedings, unless the mediator is involved in fraud or any other serious crime.

(3) Procedure for dispute resolution

The Korean Commercial Arbitration Board conducts mediation; interlocutory mediation linked with courts, mediation of disputes regarding international trade, and mediation of disputes regarding reliability in accordance with the

Rules for Mediation. The Rules for Mediation provide that the matters eligible for mediation are "disputes under private law," which "have already arisen or are likely to arise regarding a contract between parties or any other legal matter." Therefore, all general civil or commercial disputes arising in sale and purchase, supply of goods, construction, maritime affairs, international trade, insurance, entertainment, medical services, real estate, etc. are eligible for mediation.

The scope of disputes eligible for mediation is broader than for administrative mediation, which is subject to restrictions under relevant statutes. The scope of matters subject to mediation of a dispute is all-inclusive, and thus all disputes subject to civil conciliation, domestic conciliation, and administrative mediation are eligible for mediation according to the Rules for Mediation.

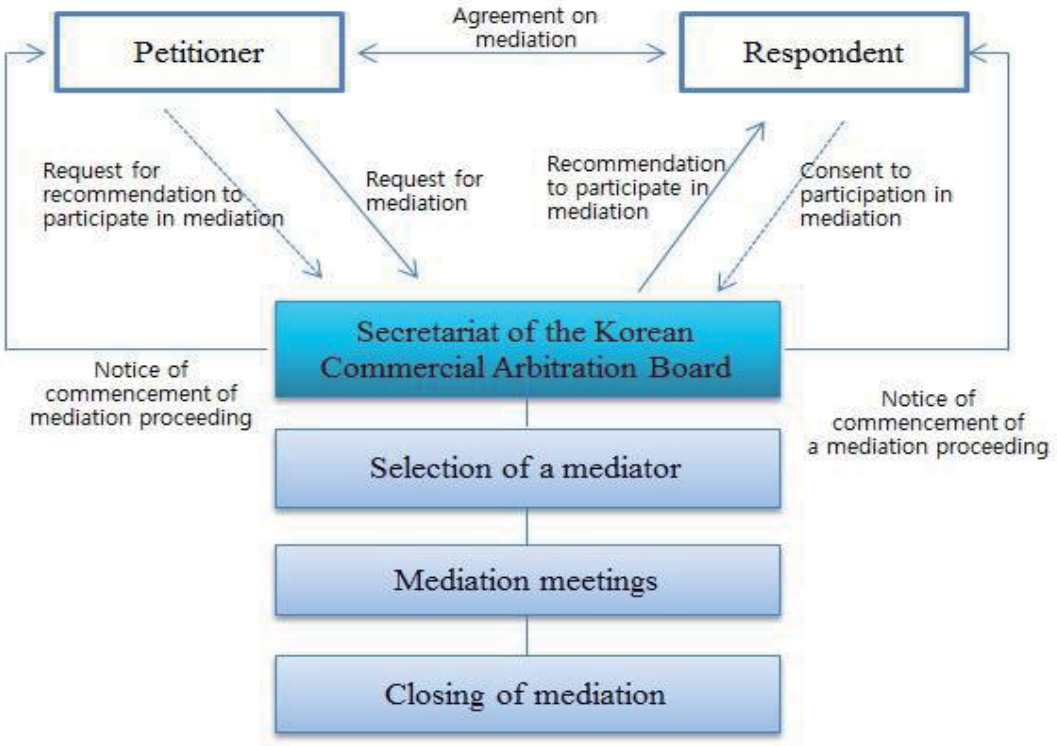
In order to the mediation system of the Arbitration Board, either party to a dispute (a petitioner) may request the Arbitration Board to recommend the other party to participate in mediation, if prior agreement (mediation clause) or an *ex post facto* mediation agreement is necessary but no meditation agreement between the parties exists or it is impracticable to make an *ex post facto* mediation agreement.

If either party to a dispute prepares a mediation petition, stating the issues to be resolved through mediation, and files it with the Mediation Center of the Arbitration Board, along with evidentiary and other necessary documents, the Arbitration Board must examine the mediation petition and the mediation agreement and then notify both parties of receipt of the mediation petition. The respondent must examine the mediation petition and prepare and submit a written answer within 15 days after the notice of commencement of the mediation proceeding is given.

Mediation fees must be borne equally and paid by the parties before a mediator is appointed.

If there is an agreement on the selection of mediator between the parties, the agreement must apply, but the Arbitration Board may select one person as mediator from the list of mediators, if no agreement exists. The mediator determines the date, time, and venue for a mediation hearing, subject to agreement with the parties, and hear opening arguments of the parties and preside over the hearing in an manner the mediator considers proper. If the parties reach agreement in the course of mediation, the mediator prepares and confirms a proposed agreement in writing, and the agreement becomes final when the mediator and the parties sign the agreement.

Procedure for Mediation by the Arbitration Board



2. Status and Example Cases

(1) Status

1) Domestic and international disputes filed for arbitration

(Units: Cases, Millions of USD, %)

Year / Category	1st half of 2014		1st half of 2013		Rate of increase or decrease	
	Cases	Amount	Cases	Amount	Cases	Amount
Domestic	143	253	107	147	33.6	72.2
Interna-tional	31	133	46	78	-32.6	70.5
Total	174	386	153	225	13.7	71.6

The number of cases and the amount of domestic arbitration cases increased by 33.6 percent and 72.2 percent, respectively, while the number of the international arbitration cases decreased by 32.6 percent but the value of such cases increased by 70.5 percent.[55]

2) Arbitration cases filed by sectors

(Units: Cases, Millions of USD, %)

Category	1st half of 2014		1st half of 2013		Rate of increase or decrease	
	Cases	Amount	Cases	Amount	Cases	Amount
Construction	64	189	48	121	33.3	56.2
Trade	22	42	39	17	-43.6	147.1

55) The Korean Commercial Arbitration Board, "The 2014 Collection of Arbitration Decisions," 2014, p. 31.

Category	1st half of 2014		1st half of 2013		Rate of increase or decrease	
	Cases	Amount	Cases	Amount	Cases	Amount
Ordinary commerce	48	12	36	65	33.3	-81.5
Maritime affairs	10	51	11	6	-9.1	750.0
Finance	4	46	7	11	-42.9	318.2
Intellectual property	2	0	6	5	-66.7	0.0
Real estate	8	18	1	0	700.0	-
Technology	5	27	1	0	400.0	-
Medical	3	1	0	0	-	-
Employment	4	0	3	0	33.3	0.0
Others	4	0	1	0	300.0	0.0
Total	174	386	153	225	13.7	71.6

The construction cases comprised largest part both in the number of cases (33.3 percent) and in the value (56.2 percent) as during the same term of the preceding year. The number of cases filed in relation to international trade decreased by 43.6 percent, compared with cases filed in the same term of the preceding year, while the sum of the value of petitions increased by 147.1 percent, showing an increase in the value of each case related to international trade. The number of cases filed in regard to maritime affairs and finance decreased by 9.1 percent and 42.9 percent, respectively. However, the sum of the value of petitions increased by 750.0 percent and 318.2 percent, respectively, also showing an increase

in the amount of each case. Furthermore, the number of cases filed in connection with real estate, technology, medical services, and finance increased, respectively, showing an even increase in the number of cases filed for each sector.[56)]

(2) Example cases

1) Construction

Liquidated damages for the delay in the completion of an apartment complex construction project

[Facts]

The respondent is the project owner who awarded a contract for a project for construction of an apartment complex, and the petitioner is the contractor. The contractor delayed performance of the project for 52 days due to a strike by the union of construction workers (five days), civil petitions filed by resident and interference by residents with construction works (four days), the respondent's instruction to perform works for installing balconies of apartments, a period during which it is impossible to finish works during the winter season, the excavation of cultural heritage, etc. Consequently, the respondent deducted an amount as liquidated damages for the delay, from the payment that it made to the contract for the construction cost. However, the contractor argues that no liquidated damages may be charged or that the contractor is entitled to the exemption from, or the reduction of, liquidated damages for the above-mentioned causes and events.

56) The Korean Commercial Arbitration Board, "The 2014 Collection of Arbitration Decisions," 2014, pp. 31-32.

[Outcomes of arbitration]

The respondent's instruction to install balconies of apartments (13 days), the excavation of cultural heritage (9 days), etc. constitute causes and events beyond control, and thus the liquidated damages shall be reduced by the amount applicable for the relevant number of days.

2) Maritime affairs

An agreement on the place of arbitration under a voyage charter agreement

[Facts]

Article 17 of the Fixture Note made by the petitioner and the respondent provided that GENCON C/P 94 shall apply to the matters not mentioned in the Fixture Note, while Article 18 of the Fixture Note provided that the governing law is Hong Kong law. However, the petitioner filed an arbitration petition with the Korean Commercial Arbitration Board with regard to a dispute that arose between the parties.

[Outcomes of arbitration]

Article 18 of the Fixture Note provided the governing law, but did not stipulate Hong Kong as the forum for arbitration. Futhermore, Hong Kong law, as specified in Article 18 of the Fixture Note, in lieu of the law of the United Kingdom under Article 19 of GENCON C/P 94, must be regarded as the governing law according to the principle of precedence of individual agreements. In addition, precedents regarding international exclusive jurisdiction are related to the jurisdiction of courts, and thus it was inappropriate to apply such precedents to arbitration. Therefore, the petitioner's petition was rejected.

3) Finance

An insurance company's claim for insurance proceeds against a reinsurance company

[Facts]

The petitioner was an insurance company established under the law of the Republic of Korea and engaging mainly in non-life insurance business, whereas the respondent was a reinsurance company established under the law of the State "A." The petitioner and the respondent had made a reinsurance agreement on a guarantee obligation undertaken by the petitioner, but the respondent did not pay on an insurance claim upon the occurrence of an insured event, hence the petitioner filed a petition for arbitration on the claim.

[Outcomes of arbitration]

An original insurance contract and the related reinsurance contract were separate contracts, legally mutually independent, and thus the relationship under either contract did not affect the relationship under the other contract (the latter part of Article 661 of the Commercial Act); and it cannot be regarded that all rights, obligations under the contracts related to the original contracts, the status of the parties to the related contracts, etc. are transferred as they are by reason that the reinsurance contract is based on the original insurance contract. The respondent argued that the respondent must be immune from liability in accordance with the follow-the-settlements doctrine or the principle of utmost good faith, commercial practices for reinsurance. However, it cannot be regarded that either follow-the-settlements doctrine or the principle of utmost good faith is

recognized as commercial practice in Korea in relation to reinsurance. Therefore, the respondent must pay the amount sought by the petitioner, out of the reinsurance claim unpaid to the petitioner, and interest thereon (eight percent per annum).

CHAPTER Ⅴ CONCLUSION

The number of cases settled by mediation has been recently increasing in Korea. Such a trend is backed up by the change in awareness at home and abroad as well as changes in various systems. However, it is still necessary to improve the systems in some aspects so as to promote the use of mediation systems with many advantages.

First of all, it is necessary to establish a central dispute mediation institution responsible for coordination of various kinds of dispute mediation systems. In the case of administrative ADR, particularly, each mediation agency prescribe specific requirements for filing a petition for mediation by statutes, and in many cases ordinary people can hardly understand which agency mediates what kind of disputes. Therefore, we need a central dispute mediation institution that can coordinate mediation.

Secondly, we need to enact a framework act for alternative dispute resolution.[57] It is necessary to establish a mediation procedure, i.e., ADR, which can contribute to the improvement of qualitative level of mediation, not merely to the promotion of mediation in formalities, and to the enhancement of citizens' confidence in the mediation procedure. In order to achieve such purpose, the framework act for alternative dispute resolution must embrace all kinds of existing ADR systems so that it can play a role as an integrated statute that provided a mixed form of systems, and

57) In December 6, 2013, a legislative bill was presented to propose a framework act on alternative dispute resolution in order to resolve disputes arising from civil affairs and affairs of public institutions impartially, fairly, and promptly by alternative dispute resolution systems but was discarded upon the expiration of the 19th term of the National Assembly (the bill (No. 1908392) introduced by assembly members represented by Wu Yun-geun on a framework act on alternative dispute resolution on December 6, 2013).

thus we should strive to create a system with which parties to mediation can resolve smoothly extreme confrontations, which prevail in our society, by suggesting a desirable direction at which various kinds of the ADR systems existing in various forms should aim for the interest of the agencies involved.

Thirdly, problems might arise in connection with the training and qualification of personnel involved in mediation or mediators. There is no institution specialized in training such personnel yet in Korea, and there are differences in criteria for qualification. Therefore, we need to prepare training programs or an institution for training experts.

If improvements can be made to solve such problems, we can accelerate the establishment and promotion of dispute mediation system and can minimize social and economic costs incurred in resolving disputes. Furthermore, such system will contribute to the enhancement of national competitiveness.

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