

KCAB Code of Ethics for Arbitrators

Introductory Note

This Code of Ethics for Arbitrators ('Code') applies to all arbitrators participating in arbitration cases under the jurisdiction of the Korean Commercial Arbitration Board ('KCAB'). All prospective arbitrators shall undertake to abide by this Code before nomination or appointment and the obligation continues throughout the arbitral proceedings.

Although this Code may be taken into account during a challenge of an arbitrator, it is not intended to constitute a legal basis for setting aside an arbitral award by the domestic court.

If the parties wish to adopt this Code as part of their agreement, it is recommended that they include the following phrase in their arbitration clause or arbitration agreement:

"The parties agree that the KCAB Code of Ethics for Arbitrators, in force on the date of commencement of arbitration under this arbitration clause, shall apply to the arbitrator(s) in respect of such arbitration."

1. Appointment of Arbitrators

1.1. A prospective arbitrator shall accept appointment only if:

- (i) he/she can serve impartially and independently of the parties, their representatives, primary witnesses, and co-arbitrators;
- (ii) he/she has suitable experience and competence to decide the case;
- (iii) he/she can devote the time and attention, which the parties are reasonably entitled to expect, to the case; and
- (iv) he/she is willing to abide by this Code.

1.2. A prospective arbitrator shall not contact the parties, their representatives or the KCAB Secretariat for the purpose of soliciting future appointment as an arbitrator.

2. Impartiality and Independence of Arbitrators

2.1. An arbitrator shall remain impartial and independent throughout the arbitral proceedings.

2.2. An arbitrator's impartiality and independence may be questioned under circumstances including, but not limited to, the following:

(i) The arbitrator is a manager, director or supervisor of a party, or is in a similar position of influence upon a party;

(ii) The arbitrator has a significant financial interest vis-à-vis a party or in the outcome of the case;

(iii) The arbitrator currently represents or advises a party or an affiliate of a party;

(iv) The arbitrator regularly advises a party or an affiliate of a party, and derives a significant financial income therefrom;

(v) The arbitrator is a lawyer within the same law firm as the counsel representing a party;

(vi) The arbitrator's law firm currently has a significant commercial relationship with a party or an affiliate of a party;

(vii) The arbitrator has served as counsel against a party or an affiliate of a party in a matter related to the dispute within the past three years;

(viii) The arbitrator was in a partnership with a co-arbitrator or counsel of a party during the same arbitration case within the past three years; or

(ix) The arbitrator was associated with a party or an affiliate of a party in a professional capacity, such as an employment relationship, within the past three years.

2.3. An arbitrator shall decide the case after conducting the arbitral proceedings in a fair and even-handed manner to both parties, and shall not be influenced by factors other than the merits of the case. An arbitrator shall avoid making statements or acting in a manner that may create the appearance of affecting his impartiality or independence.

3. Duty of Disclosure

3.1. A prospective arbitrator shall disclose all facts or circumstances that may give rise to any doubt as to his impartiality or independence in the eyes of the parties. Failure to make such

disclosure may not be an independent ground for disqualification, but may be taken into account during a challenge of an arbitrator, in which an arbitrator's impartiality and independence are contested.

3.2. If the following circumstances exist, a prospective arbitrator shall disclose such circumstances on the "Declaration of Impartiality and Independence" annexed hereto and submit it to the KCAB Secretariat:

(i) any past or present financial or business relationship with a party, any representative of a party, any co-arbitrator, or any person known to be a primary witness in the arbitration. Present relationships must be disclosed irrespective of their significance, but past relationships need only be disclosed if they were of more than a trivial nature in relation to the arbitrator's professional or business affairs;

(ii) the nature and duration of any substantial social or professional relationship with a party, any representative of a party, any co-arbitrator, or any person known to be a primary witness in the arbitration;

(iii) the nature and extent of any prior knowledge regarding the dispute;

(iv) the extent of other commitments that may affect his ability to perform the duties as arbitrator, including his existing professional activities, whether arbitration-related or otherwise.

3.3. A prospective arbitrator shall conduct reasonable inquiries to identify any relationships or relevant facts as described in Paragraph 2. Any doubt as to the necessity of disclosure should be resolved in favor of disclosure.

3.4. The duty of disclosure continues throughout the arbitral proceedings with respect to new facts or circumstances. Any advance declaration of potential conflict of interest that may arise in the future or any waiver of rights relating thereto does not discharge the arbitrator's on-going duty of disclosure as prescribed under this Paragraph.

3.5. Disclosure should be made in writing and communicated to the KCAB Secretariat, all parties, and co-arbitrators. When nominated or appointed as an arbitrator, any previous disclosure made to the parties should also be communicated to the KCAB Secretariat and co-arbitrators.

3.6. If all parties request withdrawal of an arbitrator, the arbitrator must withdraw. If one party requests withdrawal of an arbitrator based on alleged lack of impartiality and independence, the procedure for challenging an arbitrator under the relevant KCAB arbitration rules will apply.

3.7. If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator shall either:

- (i) Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or
- (ii) Withdraw.

4. Communication with Parties

4.1. An appointed or prospective arbitrator shall avoid any communication with a party or its representative in the absence of the other party, except under any of the following circumstances:

- (i) A prospective arbitrator:
 - (a) inquires only as to the identities of the parties, their representatives, or witnesses, the general nature of the dispute, or the expected duration of the arbitration; or
 - (b) responds to inquiries from a party or its representative for the purpose of determining the arbitrator's suitability or availability for nomination, provided that the merits of the case are not discussed;
- (ii) A party-nominated arbitrator, who is requested to nominate the third arbitrator, consults with the party who nominated him concerning such selection;
- (iii) The arbitrator discusses the case with a party who is present at the hearing when the other party fails to attend despite being given due notice; or
- (iv) The arbitrator discusses the case with a party who is present at the hearing, with the express consent of all parties.

4.2. Should communication with one party occur in the absence of the other party, the arbitrator shall immediately inform the other party, co-arbitrators, and KCAB Secretariat of the content of the communication, or send a copy of the communication to them.

4.3. If an arbitrator becomes aware that a co-arbitrator had improperly communicated with one party, he may inform the other party, who was not aware of such communication, to permit challenge of the offending arbitrator, provided that his intention to disclose such information has been first communicated to the co-arbitrators in writing.

4.4 An arbitrator shall take precautions to avoid significant social or professional contact with any party or its representative in the absence of the other party or its representative.

5. Arbitrators' Fees

5.1. In accepting an appointment, an arbitrator agrees to the remuneration as determined by the KCAB Secretariat, and may not enter into a unilateral arrangement with a party or its representative for any additional fees or expenses, except with the express prior consent from the KCAB Secretariat.

5.2. Any communication between parties and arbitrators regarding fees and expenses shall be made via the KCAB Secretariat.

5.3. An arbitrator shall not request an increase of his fees during the arbitral proceedings, absent extraordinary circumstances.

6. Duty of Diligence and Fairness

6.1. An arbitrator shall devote the time and attention as the parties are reasonably entitled to expect, and acquaint himself with all the facts, arguments, and discussions presented so that he may fully understand the dispute.

6.2. An arbitrator shall endeavor to prevent an unreasonable amount of expenses from arising as compared to the amount in dispute in the case.

6.3. An arbitrator shall conduct the proceedings in an impartial manner and provide each party with a fair opportunity to present evidence and arguments.

6.4. An arbitrator shall not force upon the parties settlement or mediation, or other alternative dispute resolution. An arbitrator shall not be present or otherwise participate in settlement discussions, or act as a mediator, unless requested by all parties. If all parties request such participation in settlement or mediation processes, an arbitrator shall advise the parties that he may become disqualified from future arbitral proceedings.

7. Confidentiality

7.1. An arbitrator shall keep confidential all information about the arbitral proceedings, including the deliberations of the Arbitral Tribunal and the contents of the award, unless the parties explicitly release the arbitrator from this obligation.



7.2. An arbitrator is in a relationship of trust with the parties and shall not use confidential information acquired during the arbitral proceedings for the advantage of the arbitrator or a third person, or to the disadvantage of a third person.

7.3. An arbitrator may receive help from an assistant in handling the case only if the arbitrator informs the parties of such a fact and the assistant agrees to abide by this Code's provisions and the duty of disclosure.

7.4. An arbitrator shall not become involved in enforcement or set aside of an award.