

KCAB Practice Note on Arbitration Costs

Issued 1 January 2018

**Refers to KCAB International Arbitration Rules 2016*

1. WHEN DOES THIS PRACTICE NOTE APPLY?

- 1.1 This Practice Note applies to arbitrations in which the Arbitration Costs are to be determined in accordance with Chapter 7 and Appendices 1 and 2 of the KCAB International Arbitration Rules 2016 (the "Rules").
- 1.2 The interpretation of this Practice Note is at the discretion of the Secretariat.
- 1.3 Unless otherwise defined in this Practice Note, all defined terms have the meaning assigned to them in the Rules.

2. WHAT COSTS WILL I NEED TO PAY?

- 2.1 The parties are jointly and severally liable for the Arbitration Costs, which consist of the filing fees, the administrative fees and the fees and expenses of the arbitrators, in accordance with Article 50*. Please see Section 9 below for further detail on each of these categories of costs.

3. WHEN WILL I NEED TO PAY?

- 3.1 The Secretariat will request a sum of money to be advanced by the parties to cover the Arbitration Costs (other than the filing fee) in accordance with Article 51* (the "Advance on Costs"). The request will be made when the Secretariat notifies the parties of the commencement of the arbitration proceedings.

3.2 The Advance on Costs shall be paid in equal shares by the parties in the manner and within the period of time determined by the Secretariat, usually a cash deposit by bank transfer, to arrive in KCAB's account within 15 days of the date of the Secretariat's request.

3.3 The Advance on Costs may be adjusted by the Secretariat at any time during the arbitration, by way of further requests. Such further requests will be made as soon as practicable. In the event of a counterclaim, the Secretariat will make requests for further advances, as soon as practicable after such counterclaim.

4. **WHAT HAPPENS IF A PARTY FAILS TO PAY THE ADVANCE ON COSTS?**

4.1 If the Advance on Costs is not paid in full to the Secretariat within the time period specified in the request, the Secretariat will inform the parties in order that one or another of them may make the required payment. If the Claimant and Respondent fail to pay the Advance on Costs, or any adjustment by the Secretariat in accordance with the preceding paragraphs, the Secretariat may, after consultation with the Arbitral Tribunal, if constituted, suspend or terminate the proceedings, in accordance with Article 51(5)*.

4.2 Generally, where a party fails to pay the Advance on Costs within the specified period, the Secretariat will request the other party to deposit the non-paying party's share of the Advance on Costs within 15 days, failing which the Secretariat will make a final request for the Advance on Costs by a deadline applicable to both parties.

5. **HOW WILL THE ADVANCE ON COSTS BE HELD BY KCAB?**

5.1 The Advance on Costs shall be held by the Secretariat in one of two bank accounts:

(A) Foreign currency (USD/EUR): Korea Exchange Bank (SWIFT CODE: KOEXKRSE) -Trade Center Branch, Seoul, 172-JSD-100069; or

(B) Korean currency (KRW): Woori Bank (SWIFT CODE: HVBKCRSE) - Trade Center Branch, Seoul, 424-05-001415.

5.2 VAT (Value Added Tax) can be exempted in case of overseas remittance made to the Korea Exchange Bank account in USD or EUR.

5.3 The details of which can be found at:
http://www.kcab.or.kr/jsp/kcab_eng/arbitration/arbi_35_ex.jsp

6. WHO WILL ULTIMATELY BE LIABLE FOR THE ARBITRATION COSTS?

6.1 In principle, the Arbitration Costs are borne by the unsuccessful party. However, in accordance with Article 52(1)*, the Arbitral Tribunal may apportion the Arbitration Costs in any manner it deems appropriate, taking into account the circumstances of the case.

7. WHO WILL PAY THE PARTIES' LEGAL COSTS?

7.1 In accordance with Article 53*, the legal costs and other necessary expenses incurred by the parties shall be allocated by the Arbitral Tribunal in the final Award. This may include legal fees, and costs for experts, interpreters, transcribers and witnesses.

8. WHAT HAPPENS TO REMAINING ADVANCE ON COSTS AT THE END OF A CASE?

- 8.1 The Secretariat will refund any remaining Advance on Costs, without interest, to the party or parties who paid such Advance on Costs, in accordance with Article 51(7) and 51(8)*.

9. WHAT ARE THE DIFFERENT ELEMENTS OF ARBITRATION COSTS?

9.1 Filing Fees

- 9.1.1 The Claimant is required to pay a non-refundable filing fee of KRW 1,100,000 (including VAT) with its Request for Arbitration (“Request”), in the amount specified in Appendix 1, Article 1(1)*. The same applies to any counterclaims.
- 9.1.2 For a claim or counterclaim where amount in dispute is KRW 200 million or less, an exemption of the filing fee should apply pursuant to Appendix 1, Article 1(1)*. However, if any of the claim or counterclaim amount is revised to individually exceed KRW 200 million, the filing fee shall not be exempted.
- 9.1.3 If the Claimant fails to pay the filing fee when the Request is submitted, the Secretariat will request the Claimant to pay the filing fee within 15 days of such request. If the Claimant fails to make the payment within this period, the Secretariat may send a final request to the Claimant to pay the outstanding filing fee. If the Claimant fails to pay the filing fee within the time period stated in the final request, the Secretariat may terminate the arbitration proceedings and notify the Claimant.

9.2 Administrative Fees

- 9.2.1 The parties are required to pay administrative fees in accordance with the schedule set out in Appendix 1, Article 2*. The parties are jointly and severally liable for these administrative fees in accordance with Article 50(2)*.
- 9.2.2 Further to Appendix 1, Article 2(3)*, in cases where the Request has been withdrawn or the case has been terminated before issuance of the final Award, the Secretariat may partially refund the administrative fees at its discretion.

9.3 Amount of Arbitrators' Fees

- 9.3.1 Arbitrators' fees are governed by Article 50 and Appendix 2*.
- 9.3.2 The Secretariat will provisionally fix the amount of arbitrator's fee. Generally, the amount will be the average of the minimum and maximum amounts specified in Appendix 2, Article 1(1)*, based on the amount in dispute determined in accordance with Appendix 1, Article 2(2)*. The Secretariat may make adjustments to the amount of the fees at any stage during or at the conclusion of the arbitration.
- 9.3.3 Where the Arbitral Tribunal is made up of three arbitrators, unless otherwise agreed among the arbitrators, by default, the presiding arbitrator will receive 40%, and each co-arbitrator will receive 30% of the total fees.

9.4 Payment of Arbitrator's Fees

- 9.4.1 The arbitrator is required to submit an invoice for the arbitrator's fees to the Secretariat within 30 days after the closure of the arbitral proceedings.
- 9.4.2 The Secretariat will pay the arbitrators' fees from the Advance on Costs deposited by each of the parties in accordance with Article 51*, after the issuance of the final Award. If the amount held by the Secretariat is insufficient for this purpose, the Secretariat will request a further deposit.
- 9.4.3 If the arbitration procedure is terminated before the final Award, or if an arbitrator is replaced, the Secretariat will pay such fees to the arbitrator(s) as it deems appropriate, under Appendix 2, Article 1(3)*.
- 9.4.4 Where an arbitrator is replaced in accordance with Article 15*, the Secretariat will determine the fees payable to the replaced arbitrator and the newly appointed arbitrator, in consideration of the circumstances of the case.

9.5 Arbitrator's Expenses

- 9.5.1 The arbitrator's reasonable expenses will be reimbursed pursuant to Article 50*.
- 9.5.2 For Arbitrators residing outside of country where the hearing is held, the secretariat will provide USD 700 per day including one day before and after

the hearing. This amount includes accommodation, food, domestic transportation costs, communication costs and cancellation costs due to changes in the hearing schedule that are not caused by the arbitrator's personal reasons.

9.5.3 For Arbitrators residing outside of the country where the hearing is held, reasonable actual expenses covering travel expenses for air fares (at most business class), ship fares, railway fares, car-hire costs for travelling between countries are additionally reimbursable at cost, where the arbitrator is travelling from and returning to their place of residence. When an arbitrator travels out of his place of residence for hearing purposes, his travel expenses will be limited to roundtrip fares for travelling between the arbitrator's place of residence and the place of the hearing.

9.5.4 For arbitrators residing in the same country as the hearing is held who travel domestically for arbitration purposes will be reimbursed for his reasonable actual expenses including accommodation, food, and domestic transportation costs.

9.5.5 Where an arbitrator is replaced in accordance with Article 15*, the Secretariat may determine the expenses payable to the outgoing arbitrator.

9.5.6 The expenses of the Arbitral Tribunal shall not be included in the calculation of the amount of the arbitrators' fees under paragraph 9.3 above.

10. HOW TO APPLY FOR EMERGENCY MEASURES?

10.1 Application for Emergency Measures

10.1.1 In accordance with Article 32*, a party seeking conservatory and interim measures may, in concurrence or after the submission of the Request but before constitution of the Arbitral Tribunal, apply in writing to the Secretariat for conservatory and interim measures by an emergency arbitrator ("Emergency Measures").

10.2 Arbitration Costs for Emergency Measures

10.2.1 If the applicant fails to pay the administrative fee of KRW 3 million according to Appendix 1, Article 3*, and the emergency arbitrator's fee of KRW 15 million according to Appendix 2, Article 3*, together with the application for emergency measures, the Secretariat will request the applicant to make payment within 7 days of such request.

10.2.2 If the applicant fails to pay within this period, the Secretariat may make a final request for payment within 7 days. If the applicant fails to pay after the final request, the proceedings for emergency measures will be terminated.

11. WHAT ARE THE COSTS IN EXPEDITED PROCEDURE?

11.1 Administrative Fees in Expedited Procedure

11.1.1 In cases where the amount in dispute is KRW 200 million or less, the administrative fees shall be charged according to the table below. For such cases, the administrative fees set out in Appendix 1, Article 2* shall not apply.

Amount in Dispute	Administrative Fees
Up to KRW100,000,000	Amount in Dispute x 0.45% [minimum KRW50,000]
From KRW 100,000,001 to KRW 200,000,000	KRW 450,000 + 0.3% x [Amount in Dispute - KRW 100 million]

11.2 Arbitrator's Fees in Expedited Procedure

11.2.1 Notwithstanding the section 9.3 above, during expedited proceedings where the amount in dispute is less than KRW 200 million, the arbitrator will be paid the minimum amount specified in the arbitrator's fee table under Appendix 2, Article 1(1)*.

12. HOW TO APPLY FOREIGN EXCHANGE RATE?

- 12.1 The foreign exchange rate applicable in calculating the amount in dispute shall be either basic exchange rate or arbitrated basic exchange rate published by the Bank of Korea as of the date when Request for Arbitration has been received by the secretariat