

KCAB Practice Note on the Appointment of Arbitrators

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 under the KCAB International Arbitration Rules 2016 (the "Rules").
- 1.2 This practice note does not apply in respect of Emergency Arbitrators as set out in Appendix 3*.
- 1.3 The interpretation of this Practice Note is at the discretion of the Secretariat.
- 1.4 Unless otherwise defined in this Practice Note, all defined terms have the meaning assigned to them in the Rules.

2. HOW MANY ARBITRATORS WILL THERE BE IN THE ARBITRAL TRIBUNAL?

- 2.1 The number of arbitrators may be determined in the following ways:
 - 2.1.1 **STEP ONE:** The parties may agree between themselves whether to have one or three arbitrators in the arbitral tribunal.
 - 2.1.2 **STEP TWO:** If there is no agreement between the parties on the number of arbitrators, the Secretariat may determine the number, having regard to the general rule in Article 11* that disputes are to be heard by a sole arbitrator. The Secretariat may seek comments from the parties concerning the number of arbitrators as follows:
 - (A) the Secretariat will request the parties' comments at the point at which the Secretariat acknowledges receipt of the Request for Arbitration.

- (B) the Secretariat will grant both parties the opportunity to submit these comments within 30 days; and
- (C) either party may make an application for an extension of time limit to submit comments on the number of arbitrators. In accordance with Article 9(2)*, the Secretariat may grant an extension once only for a period of 30 days.

2.2 The Secretariat will then determine whether the number of arbitrators shall be one or three, taking into account:

- 2.2.1 the intention of the parties;
- 2.2.2 whether the disputed amount exceeds KRW 3 billion;
- 2.2.3 the complexity of the dispute; and
- 2.2.4 any other relevant considerations.

3. **WHO CHOOSES THE ARBITRAL TRIBUNAL?**

3.1 **Sole arbitrator**

- 3.1.1 **STEP ONE:** Where a sole arbitrator is chosen following the process set out in section 2 above, the parties shall aim to jointly nominate a sole arbitrator in accordance with Article 12(1)*.
- 3.1.2 If the parties fail to nominate an arbitrator within 30 days, the Secretariat may, if requested by a party, once grant an extension of 30 days.
- 3.1.3 **STEP TWO:** If the parties still fail to nominate an arbitrator within the time limit, the Secretariat shall select an arbitrator pursuant to Article 12(1)*, and in accordance with the procedure set out in section 5 below.

3.2 **Three Arbitrators**

- 3.2.1 **STEP ONE:** Where a three person tribunal is chosen following the process set out in section 2 above, the parties shall each nominate an arbitrator in accordance with Article 12(2)* (or, where there are multiple claimants and/or respondents, Article 12(3)*).

- 3.2.2 If the parties fail to nominate the arbitrators within the 30 days' time limit, the Secretariat may, if requested by a party, once grant an extension of 30 days.
- 3.2.3 STEP TWO: If the parties still fail to nominate an arbitrator within the time limit, the Secretariat shall select an arbitrator pursuant to section 5 below.
- 3.2.4 STEP THREE: The nominated arbitrators, once confirmed by the Secretariat, shall jointly nominate the third arbitrator.
- 3.2.5 STEP FOUR: If the arbitrators fail to nominate a third arbitrator, the Secretariat shall select the third arbitrator pursuant to section 5 below.

4. HOW DOES A PARTY NOMINATE AN ARBITRATOR?

- 4.1 If a party nominates an arbitrator, the arbitrator nomination form (or in the case of a sole arbitrator, a nomination agreement) shall be submitted to the Secretariat with the name, address, current position, contact details, and other relevant details of the arbitrator.
- 4.2 If the parties or the arbitrators (as the case may be) nominate an arbitrator, and such arbitrator refuses to accept his or her nomination, the Secretariat shall, on no more than one occasion, request the parties or the arbitrators to nominate a new arbitrator within 15 days of such request.

5. HOW DOES THE SECRETARIAT APPOINT AN ARBITRATOR?

- 5.1 The Secretariat maintains a panel of arbitrators, which contains more than 300 international experts.
- 5.2 If the Secretariat appoints an arbitrator in accordance with section 3.1.3, 3.2.3 or 3.2.5 above, the Secretariat shall appoint an arbitrator, taking into account the following:

- 5.2.1 the prospective arbitrator's experience, availability, nationality and residence;
 - 5.2.2 any request from either party that the sole arbitrator or chair of the tribunal be of a different nationality to that of the parties, in accordance with Article 12(4)*;
 - 5.2.3 the appointee's ability to draft awards and conduct proceedings effectively; and
 - 5.2.4 the KCAB's Code of Ethics for Arbitrators.
- 5.3 If the Secretariat is requested by a party to appoint an arbitrator whose nationality is different to the nationalities of the parties as set out at section 1.1 above, the Secretariat shall inform the other party of this request and provide an opportunity for the other party to respond within 7 days of receipt of the request.

6. HOW ARE NOMINATIONS CONFIRMED?

- 6.1 Upon receipt of an arbitrator nomination form or agreement from the parties or the arbitrators (as the case may be), the Secretariat shall request the nominated arbitrator to accept the appointment, and complete a statement of acceptance, a statement of impartiality and independence and a CV.
- 6.2 If the Secretariat determines that it is appropriate for the nominated person to act as an arbitrator, the Secretariat shall, without delay, notify the parties and the arbitrators that the nomination is confirmed. If this happens, the Secretariat shall enclose the arbitrator's statement of acceptance, statement of impartiality and independence, and CV.
- 6.3 If the Secretariat determines that it is clearly inappropriate for the nominated person to act as an arbitrator, the Secretariat may request the parties and the

arbitrators to submit comments on the nomination of the arbitrator within 7 days of such request.

- 6.4 If the Secretariat refuses to confirm the nomination of an arbitrator, the Secretariat shall notify the parties and the arbitrators of its refusal, and shall request the parties or the arbitrators who nominated the unconfirmed arbitrator to nominate a new arbitrator within 15 days of such request.

7. WHAT DUTIES DO ARBITRATORS HAVE?

- 7.1 Once appointed, the arbitral tribunal shall consult with the parties and prepare a procedural timetable containing the following information:

- 7.1.1 main procedural issues in dispute;
- 7.1.2 number of hearings and expected dates;
- 7.1.3 timetable as to evidence, covering submission of evidence, document production, witness statement, on-site inspection, expert's report and other evidential methods;
- 7.1.4 expected date for submission of the arbitral award; and
- 7.1.5 any other essential information on other aspects of the proceedings.

- 7.2 The chair of an arbitral tribunal or a sole arbitrator will complete a record of hearings, signed or sealed, which together with the arbitral award, shall be submitted to the Secretariat. However, a record of hearings does not need to be submitted if the following can be established by other written documents.

- 7.2.1 place, date and time of the hearings;
- 7.2.2 names of attendees including the names of the arbitrators, parties, representatives and witnesses;
- 7.2.3 name and submission date of documents; and
- 7.2.4 other required information.