

NOTE ON GUIDELINES AND RECOMMENDATIONS FOR THE APPOINTMENT OF ARBITRATORS

Approved by the Plenary of the Court on 3 July 2018

I. FIRST GUIDELINE: PARTY AUTONOMY

1. Parties are free to agree the name of all the members of the arbitral tribunal.
2. Recommendation: the Court encourages parties to exercise this right and appoint the arbitrators themselves, if possible. Not just the two wing arbitrators but also the Chairperson, in the event of an arbitral tribunal, or the Sole Arbitrator, in the event of a one-member arbitral body.

II. SECOND GUIDELINE: POSSIBILITY OF CHOOSING THE APPOINTMENT SYSTEM

3. If the parties do not appoint all the arbitrators, they may jointly request the Court to apply a particular procedure for the appointment, so long as the Court considers it to be appropriate.
4. In any case, the Court considers that the following alternatives for the appointment of arbitrators are valid:
 - (i) System A: Direct Appointment (see Annex A)
 - (ii) System B: Simple List (see Annex B)
 - (iii) System C: Common List (see Annex C)
5. Recommendation: the parties must contact the Court as soon as the decision is made to request the use of a particular appointment system. In any case, such request must be notified to the Court before the deadline for the appointment of arbitrators by the Court absent parties' agreement expires.

III. THIRD GUIDELINE: DEFAULT APPOINTMENT SYSTEMS TO BE USED BY THE COURT

6. Unless the parties have agreed on a different system in accordance with the Second Guideline, the Court is free to decide in each case which system for the appointment of arbitrators is more convenient in. Nevertheless, as a general rule, the Court shall take into consideration the following criteria:
 - (i) If the amount in dispute in the arbitration is below 1.000.000 euros, or, in any case, when any of the parties is in default, System A, Direct Appointment, shall be preferentially considered.

- (ii) If the amount in dispute in the arbitration exceeds 1.000.000 euros, System B, Simple List, shall be preferentially considered.
- (iii) If the amount in dispute in the arbitration is not determined, the Court will use the system it considers convenient.

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ANNEX A – SYSTEM A: DIRECT APPOINTMENT

In cases of Direct Appointment of arbitrators, the Court shall proceed to appoint the appropriate person in accordance with the rules of the Arbitrator Appointment Committee, available on the Court's website www.arbitramadrid.com.¹

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¹<http://arbitramadrid.com/documents/20181/25890/Reglas+de+la+Comisi%C3%B3n+de+Designaci%C3%B3n+de+%C3%81rbitros+de+la+Corte+de+Arbitraje+de+Madrid.pdf/08246a7b-037f-4989-bd6c-bb2f154856db>

ANNEX B – SYSTEM B: SIMPLE LIST

The simple list system shall work as follows:

- (i) The Court will provide a list which will include the potential candidates. The number of candidates will be determined by the Court after consulting the parties, but it will not be lower than 3.
- (ii) The Court shall consult with the parties the convenience of contacting the candidates in order to conduct a conflict check before preparing the list.² Absent parties' agreement, no conflict check will be conducted.
- (iii) If parties authorize the conflict check, the Court must submit, jointly with the list, any information disclosed by the candidates.
- (iv) Once the list is prepared, it shall be submitted to the parties so that, within the established deadline, they can cross out the names of the candidates they want to exclude from the process and order by preference the remaining, if any. The preferred candidate will be placed in first position (i.e. receive one point) and the least preferred in the last position.
- (v) In line with article 14.1 of the Rules, if there are multiple claimants or respondents, the claimants shall jointly submit one single list of preferences and the defendants shall proceed in the same way. In the absence of joint lists, the Court will appoint the arbitrator following System A, Direct Appointment.
- (vi) Once the preferences of the parties have been received, the Court will add the results of the two lists and choose the candidate with less points. If several candidates obtain the lowest result, the Court will choose which of those candidates will be appointed.
- (vii) If the parties cross out the names of all the candidates, the Court would proceed to appoint the arbitrator following System A, Direct Appointment.
- (viii) If the parties do not agree that a conflict check be conducted prior to the inclusion of the candidates in the list, the Court shall confirm the appointment of the candidate with less points, in accordance with articles 13.3 and 13.4 of the Statutes.
- (ix) If the parties do not agree that a conflict check be conducted prior to the inclusion of the candidates in the list and the candidate with less points does not accept the appointment for any reason, the candidate with the same points shall be appointed, if such a candidate exists. If it does not, the second candidate with less points will be appointed, and so on, in the event that the appointed arbitrator does not accept the assignment either.

² The reason is that conducting of a conflict check of a list of 5 or 7 candidates may affect the arbitration's confidentiality.

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ANNEX C – SYSTEM C: COMMON LIST

The Common List system shall work as follows:

- (i) Each party will submit to the Court (without copying the other party on that submission) a list with the potential candidates. The number of candidates to be submitted shall be determined by the court, after consultation with the parties. The process of appointment is developed in the following points assuming that the number of candidates chosen by each party is 3.
- (ii) The Court will prepare a common list with the candidates chosen by the parties (6) and add the same number of candidates chosen by each party (3). The result will be a list of 9 candidates sorted in alphabetical order, although each party will only know the origin of the 3 arbitrators it chose.
- (iii) The Court shall consult with the parties the convenience of contacting the candidates in order to conduct a conflict check before preparing the list.³ Absent parties' agreement, no conflict check will be conducted.
- (iv) If the parties authorize the conflict check, the Court must submit, jointly with the list, any information disclosed by the candidates. The parties will be in charge of conducting the corresponding conflict check of the candidates they wish to include in the list. The parties shall send to the Court the information disclosed by those candidates, in order for the Court to submit that information together with the list.
- (v) Once the list is prepared, it shall be submitted to the parties so that, within the established deadline, they can cross out the names of the candidates they want to exclude from the process and order by preference the remaining, if any. The preferred candidate will be placed in first position (i.e. receive one point) and the least preferred in last position.
- (vi) In line with article 14.1 of the Rules, if there are multiple claimants or respondents, the claimants shall jointly submit one single list and the defendants shall proceed in the same way. In the absence of the joint lists, the Court will appoint the arbitrator following System A, Direct Appointment.
- (vii) Once the preferences of the parties have been received, the Court will add the results of the two lists and choose the candidate with less points. If several candidates obtain the lowest result, the Court will choose which of those candidates will be appointed.
- (viii) If the parties cross out the names of all the candidates, the Court would proceed to appoint the arbitrator following the System A, Direct Appointment.

³ The reason is that conducting a conflict check of a list of 5 or 7 candidates may affect the arbitration's confidentiality.

- (ix) If the parties do not agree that a conflict check be conducted prior to the inclusion of the candidates in the list, the Court shall confirm the appointment of the candidate with less points, in accordance with articles 13.3 and 13.4 of the Statutes.

- (x) If the parties do not agree that a conflict check be conducted prior to the inclusion of the candidates in the list and the candidate with less points does not accept the appointment for any reason, the candidate with the same points shall be appointed, if such a candidate exists. If it does not, the second candidate with less points will be appointed, and so on, in the event that the appointed arbitrator does not accept the assignment either.

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