

# DIS-Arbitration Rules 98

(in force as of July 1, 1998)

## DIS MODEL ARBITRATION AGREEMENT

The German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V., DIS) advises all parties wishing to make reference to the DIS Arbitration Rules to use the following **arbitration clause**:

"All<sup>[1]</sup> disputes<sup>[2]</sup> arising in connection<sup>[3]</sup> with this contract<sup>[4]</sup> or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law<sup>[5]</sup>."

The following points - particularly in the case of a foreign element - should be considered:<sup>[6]</sup>

- The place of arbitration is ...<sup>[7]</sup>
- The number of arbitrators is ...<sup>[8]</sup>
- The language of the arbitral proceedings is ...<sup>[9]</sup>
  
- The applicable substantive law is ...<sup>[10]</sup>

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<sup>[1]</sup> The arbitration agreement should explicitly refer to "all" disputes since it is otherwise difficult to determine which disputes are covered by the clause.

<sup>[2]</sup> An arbitration agreement is only valid if the subject-matter of the proceedings is arbitrable; for German law see Section 1030 ZPO.

<sup>[3]</sup> This wording is comprehensive and leads to the result that non-contractual claims which arise "in connection with the agreement" are also covered.

<sup>[4]</sup> To the extent the arbitration agreement is entered into as a separate agreement (so-called "Schiedsabrede") and not in the form of a clause in a contract (so-called "Schiedsklausel"), the contract to which the arbitration agreement relates should be specified precisely.

<sup>[5]</sup> A significant characteristic of arbitration as a private form of jurisdiction is that the jurisdiction of state courts (but not interim measures of protection, see Section 1033 ZPO and Section 20 DIS Arbitration Rules) is excluded. To avoid confusion, clarification in the arbitration agreement is recommended. In some legal systems, such addition may be required.

<sup>[6]</sup> The issues contained in the first three items should be reflected by corresponding supplementation of the arbitration agreement. To the extent the substantive law applicable to the contract has not been agreed elsewhere in the contract, this should be contained in the arbitration agreement.

<sup>[7]</sup> To the extent a place of arbitration in Germany is agreed upon Sections 1025 et seq. ZPO - which allow further agreement by the parties - apply. In the case of agreement upon a place of arbitration outside of Germany, mandatory provisions of procedural law applicable at that place should be considered. The place of arbitration determines the procedural framework of the proceedings, jurisdiction in case of any necessary recourse to the state courts and is, as a general rule, a crucial factor for the methodology used in fact-finding and the taking of evidence. It is not, however, necessary to conduct the arbitration at this place.

<sup>[8]</sup> Pursuant to Section 3 DIS Arbitration Rules, the arbitral tribunal generally consists of three

arbitrators. The parties may, however, agree to have the dispute determined by a sole arbitrator.

<sup>[9]</sup> To the extent the language has not already been agreed to by the parties in the arbitration clause, the arbitral tribunal decides on this issue after its constitution (Section 22 subsec. 1 DIS Arbitration Rules). Where there has been no agreement by the parties on the language, they do not know at the time of commencing proceedings what language qualifications counsel and the arbitrators must have.

<sup>[10]</sup> The substantive law applicable to the dispute (see also Footnote 6) must be distinguished from the procedural law applicable to the arbitration (see also Footnote 7).

## **Arbitration Rules**

### **Section 1 Scope of application**

1.1: The Arbitration Rules set forth herein apply to disputes which, pursuant to an agreement concluded between the parties, are to be decided by an arbitral tribunal in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS).

1.2: Unless otherwise agreed by the parties, the Arbitration Rules in effect on the date of commencement of the arbitral proceedings apply to the dispute.

### **Section 2 Selection of arbitrators**

2.1: The parties are free in their selection and nomination of arbitrators.

2.2: Unless otherwise agreed by the parties, the chairman of the arbitral tribunal or the sole arbitrator, as the case may be, shall be a lawyer.

2.3: Upon request, the DIS will make suggestions for the selection of arbitrators.

### **Section 3 Number of arbitrators**

Unless otherwise agreed by the parties, the arbitral tribunal consists of three arbitrators.

### **Section 4 Requisite copies of written pleadings and attachments**

All written pleadings and attachments shall be submitted in a number of copies at least sufficient to provide one copy for each arbitrator, for each party and, in case the pleadings are filed with the DIS, one copy for the latter.

### **Section 5 Delivery of written communications**

5.1: The statement of claim and written pleadings, containing pleas as to the merits of the claim or a withdrawal of the claim, shall be delivered by registered mail/return receipt requested or by courier, telefax or other means of delivery inasmuch as they provide a record of receipt. All other written communications may be delivered by any other means of delivery. All written communications and information submitted to the arbitral tribunal shall likewise be conveyed to the other party at the same time.

5.2: Delivery of all written communications by the parties, the arbitral tribunal or the DIS Secretariat shall be made to the last-known address, as provided by the addressee or, as the case may be, by the other party.

5.3: If the whereabouts of a party or a person entitled to receive communications on his behalf are not known, any written communication shall be deemed to have been received on the day on which it could have been received at the last-known address upon proper delivery by registered mail/return receipt requested, or by courier, telefax or other means of delivery inasmuch as they provide a record of receipt.

5.4: If a written communication delivered in accordance with subsection 1 of this section is received by any other means, delivery is deemed to have been effected not later than at the time of actual receipt.

5.5: Where a party has retained legal representation, delivery should be made to the latter.

## Section 6 Commencement of arbitral proceedings

6.1: The claimant shall file the statement of claim with a DIS Secretariat. Arbitral proceedings commence upon receipt of the statement of claim by a DIS Secretariat.

6.2: The statement of claim shall contain:

- (1) identification of the parties,
- (2) specification of the relief sought,
- (3) particulars regarding the facts and circumstances which give rise to the claim(s),
- (4) reproduction of the arbitration agreement,
- (5) nomination of an arbitrator, unless the parties have agreed on a decision by sole arbitrator.

6.3: In addition, the statement of claim should contain:

- (1) particulars regarding the amount in dispute,
- (2) proposals for the nomination of an arbitrator, where the parties have agreed on a decision by sole arbitrator,
- (3) particulars regarding the place of arbitration, the language of the proceedings and the rules applicable to the substance of the dispute.

6.4: If the statement of claim is incomplete or if the copies or attachments are not submitted in the requisite number, the DIS Secretariat requests the claimant to make a corresponding supplementation and sets a time-limit for compliance.

Commencement of the arbitral proceedings pursuant to subsection 1, sentence 2 of this section is not affected as long as supplementation is made within the set time-limit; otherwise, the proceedings are terminated without prejudice to the claimant's right to reintroduce the same claim.

### **Section 7 Costs upon commencement of proceedings**

7.1: Upon filing the statement of claim, the claimant shall pay to the DIS the administrative fee as well as a provisional advance on the arbitrators' costs in accordance with the schedule of costs (appendix to section 40 sub. 5) in force on the date of receipt of the statement of claim by the DIS Secretariat.

7.2: The DIS Secretariat invoices the claimant for the DIS administrative fee and the provisional advance and, if payment has not already been made, sets a time-limit for payment. If payment is not effected within the time-limit, which may be subject to reasonable extension, the proceedings are terminated without prejudice to the claimant's right to reintroduce the same claim.

### **Section 8 Delivery of statement of claim to respondent**

The DIS Secretariat delivers the statement of claim to the respondent without undue delay. The DIS Secretariat may make delivery of the statement of claim contingent on having received the number of copies of the statement of claim and attachments required pursuant to section 4 as well as payment required pursuant to section 7.

### **Section 9 Statement of defence**

After constitution of the arbitral tribunal pursuant to section 17, the arbitral tribunal sets a time-limit for the respondent to file the statement of defence. When setting the time-limit, appropriate consideration shall be given to the date the respondent received the statement of claim.

### **Section 10 Counterclaim**

10.1: Any counterclaim shall be filed with a DIS Secretariat. Section 6 subs. 1 - 4 apply mutatis mutandis.

10.2: The arbitral tribunal decides on the admissibility of the counterclaim.

### **Section 11 Costs of filing counterclaim**

11.1: Upon filing a counterclaim, the respondent shall pay to the DIS the administrative fee in accordance with the schedule of costs in force on the date of commencement of the proceedings (appendix to section 40 sub. 5).

11.2: The DIS Secretariat invoices the respondent for the DIS administrative fee and, if payment has not already been made, sets a time-limit for payment. If payment is not effected within the time-limit, which may be subject to reasonable extension, the counterclaim is deemed not to have been filed.

11.3: The DIS Secretariat delivers the counterclaim to the claimant and the arbitral tribunal without undue delay. The DIS Secretariat may make delivery of the counterclaim contingent on having received the number of copies of the counterclaim and attachments required pursuant to section 4 as well as payment required pursuant to subsection 1 of this section.

## **Section 12 Arbitral tribunal with three arbitrators**

12.1: Upon delivery of the statement of claim, the DIS Secretariat calls upon the respondent to nominate an arbitrator. If the DIS Secretariat does not receive a nomination from the respondent within 30 days after receipt of the statement of claim by the respondent, the claimant may request nomination by the DIS Appointing Committee. The DIS Secretariat may extend the 30 day time-limit upon application. A nomination is still timely after expiry of the period of 30 days as long as the DIS Secretariat receives such nomination prior to a request by the claimant for nomination by the DIS Appointing Committee.

A party is bound by his nomination of an arbitrator once the DIS Secretariat has received the nomination.

12.2: The two arbitrators nominate the chairman of the arbitral tribunal and notify the DIS Secretariat thereof without undue delay. When making such nomination, the arbitrators should take into account concurring proposals by the parties. If the DIS Secretariat does not receive a nomination of the chairman of the arbitral tribunal from the two arbitrators within 30 days after calling upon them to do so, each party may request nomination of the chairman by the DIS Appointing Committee. A nomination is still timely after expiry of the period of 30 days as long as the DIS Secretariat receives such nomination prior to a request by one of the parties for nomination by the DIS Appointing Committee.

## **Section 13 Multiple parties on claimant or respondent side**

13.1: Unless otherwise agreed by the parties, multiple claimants shall jointly nominate one arbitrator in their statement of claim.

13.2: If two or more respondents are named in the statement of claim, unless otherwise agreed by the parties, the respondents shall jointly nominate one arbitrator within 30 days after their receipt of the statement of claim. If the respondents have received the statement of claim at different times, the time-limit shall be calculated by reference to the time of receipt by the respondent who last received the statement of claim. The DIS Secretariat may extend the time-limit. If the respondents fail to agree on a joint nomination within the time-limit, the DIS Appointing Committee, after having consulted the parties, nominates two arbitrators, unless the parties agree otherwise. A nomination made by the claimant side is set aside by the DIS Appointing Committee's nomination.

The two arbitrators nominated by the parties or the DIS Appointing Committee nominate the chairman of the tribunal. Section 12 sub. 2 applies mutatis mutandis, in which case the request of one party is sufficient.

13.3: The arbitral tribunal decides on the admissibility of the multi-party proceedings.

#### **Section 14 Sole arbitrator**

Where the arbitral tribunal is to consist of a sole arbitrator and the parties do not reach agreement on a sole arbitrator within 30 days after receipt of the statement of claim by the respondent, each party may request nomination of a sole arbitrator by the DIS Appointing Committee.

#### **Section 15 Impartiality and independence**

Each arbitrator must be impartial and independent. He shall exercise his office to the best of his knowledge and abilities, and in doing so is not bound by any directions.

#### **Section 16 Acceptance of mandate as arbitrator**

16.1: Each person who is nominated as arbitrator shall without undue delay notify the DIS Secretariat of his acceptance of the office as arbitrator and declare whether he fulfills the qualifications agreed upon by the parties. Such person shall disclose all circumstances which are likely to give rise to doubts as to his impartiality or independence. The DIS Secretariat informs the parties accordingly.

16.2: If circumstances are apparent from an arbitrator's declaration, which are likely to give rise to doubts as to his impartiality or independence or his fulfillment of agreed qualifications, the DIS Secretariat grants the parties an opportunity to comment within an appropriate time-limit.

16.3: An arbitrator shall disclose to the parties and the DIS Secretariat circumstances likely to give rise to doubts as to his impartiality or independence also throughout the arbitral proceedings.

#### **Section 17 Confirmation of arbitrators**

17.1: The DIS Secretary General may confirm the nominated arbitrator as soon as the DIS Secretariat receives the arbitrator's declaration of acceptance, and no circumstances likely to give rise to doubts regarding the impartiality or independence of an arbitrator or his fulfillment of agreed qualifications are apparent from the declaration or if within the time-limit set by section 16 sub. 2 no party objects to the confirmation of that arbitrator.

17.2: In all other cases the DIS Appointing Committee decides on the confirmation of the nominated arbitrator.

17.3: Upon confirmation of all arbitrators, the arbitral tribunal is constituted. The DIS Secretariat informs the parties of the constitution of the arbitral tribunal.

## Section 18 Challenge of arbitrator

18.1: An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator nominated by him, or in whose nomination he has participated, only for reasons of which he becomes aware after the nomination has been made.

18.2: The challenge shall be notified and substantiated to the DIS Secretariat within two weeks of being advised of the constitution of the arbitral tribunal pursuant to section 17 sub. 3 or of the time at which the party learns of the reason for challenge. The DIS Secretariat informs the arbitrators and the other party of the challenge and sets a reasonable time-limit for comments from the challenged arbitrator and the other party. If the challenged arbitrator does not withdraw from his office or the other party does not agree to the challenge within the time-limit fixed, the challenging party may within two weeks request the arbitral tribunal to decide on the challenge unless otherwise agreed by the parties.

18.3: If the other party agrees to the challenge, or if the arbitrator withdraws from his office after being challenged, or if the application of challenge has been granted, a substitute arbitrator shall be nominated. Sections 12 to 17 apply mutatis mutandis to the nomination and confirmation of the substitute arbitrator.

## Section 19 Default of an arbitrator

19.1: If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act, his mandate terminates if he withdraws from his office or if the parties agree on the termination. If the arbitrator does not withdraw from his office, or if the parties cannot reach agreement on the termination of his mandate, any party may request the competent court to decide on the termination of the mandate.

19.2: If the mandate of an arbitrator is terminated, a substitute arbitrator shall be nominated. Sections 12 to 17 apply mutatis mutandis to the nomination and confirmation of the substitute arbitrator.

19.3: If, pursuant to subsection 1 of this section or of section 18 sub. 2, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in subsection 1 of this section or section 18 sub. 2.

## Section 20 Interim measures of protection

20.1: Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

20.2: It is not incompatible with an arbitration agreement for a party to request an interim measure of protection in respect of the subject-matter of the dispute from a court before or during arbitral proceedings.

### **Section 21 Place of arbitration**

21.1: Failing an agreement by the parties on the place of arbitration, this shall be determined by the arbitral tribunal.

21.2: Notwithstanding subsection 1 of this section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for an oral hearing, for hearing witnesses, experts or the parties, for consultation among its members or for inspection of property or documents.

### **Section 22 Language of proceedings**

22.1: The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

22.2: The arbitral tribunal may order that expert reports and other documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

### **Section 23 Applicable law**

23.1: The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

23.2: Failing any designation by the parties, the arbitral tribunal shall apply the law of the State with which the subject-matter of the proceedings is most closely connected.

23.3: The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so. The parties may so authorize the arbitral tribunal up to the time of its decision.

23.4: In all cases the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of trade applicable to the transaction.

### **Section 24 Rules of procedure**

24.1: Statutory provisions of arbitral procedure in force at the place of arbitration from which the parties may not derogate, the Arbitration Rules set forth herein, and, if any, additional rules agreed upon by the parties shall apply to the arbitral proceedings. Otherwise, the arbitral tribunal shall have complete discretion to determine the procedure.



24.2: The arbitral tribunal shall undertake to obtain from the parties comprehensive statements regarding all relevant facts and the proper applications for relief.

24.3: The chairman of the arbitral tribunal presides over the proceedings.

24.4: Individual questions of procedure may be decided by the chairman of the arbitral tribunal alone if so authorized by the other members of the arbitral tribunal.

### **Section 25 Advance on costs of arbitral tribunal**

The arbitral tribunal may make continuation of the arbitral proceedings contingent on payment of advances on the anticipated costs of the arbitral tribunal. It should request each party to pay one half of the advance. In fixing the advance, the arbitrators' total fees and the anticipated reimbursements as well as any applicable value added tax may be taken into consideration. The provisional advance paid by the claimant to the DIS pursuant to section 7 sub. 1 shall be credited to the claimant's share of the advance on costs.

### **Section 26 Due process**

26.1: The parties shall be treated with equality. Each party shall be given a full opportunity to present his case at all stages of the proceedings. The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of taking evidence. The parties are entitled to be legally represented.

26.2: All written pleadings, documents or other communications supplied to the arbitral tribunal by one party shall be communicated to the other party. Likewise, expert reports and other evidentiary documents on which the arbitral tribunal may rely in making its decision are to be communicated to both parties.

### **Section 27 Establishing the facts**

27.1: The arbitral tribunal shall establish the facts underlying the dispute. To this end it has the discretion to give directions and, in particular, to hear witnesses and experts and order the production of documents. The arbitral tribunal is not bound by the parties' applications for the admission of evidence.

27.2: Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal. It may also require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents or property for his inspection.

27.3: Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

### **Section 28 Oral hearing**

Subject to agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted on the basis of documents and other materials. Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

### **Section 29 Records of oral proceedings**

A record shall be made of all oral hearings. The record shall be signed by the chairman. The parties shall each receive a copy of the record.

### **Section 30 Default of a party**

30.1: If the respondent fails to communicate his statement of defence within the time-limit set in accordance with section 9, the arbitral tribunal may continue the proceedings without treating such failure in itself as an admission of the claimant's allegations.

30.2: If any party fails to appear at an oral hearing after having been duly summoned, or to produce documentary evidence within a set time-limit, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

30.3: Any default which has been justified to the tribunal's satisfaction will be disregarded. Apart from that, the parties may agree otherwise on the consequences of default.

### **Section 31 Closing of proceedings**

The arbitral tribunal may, when satisfied that the parties have had sufficient opportunity to present their case, set a time-limit. Upon the expiry of the time-limit, the arbitral tribunal may reject further pleadings by the parties as to the facts of the case.

### **Section 32 Settlement**

32.1: At every stage of the proceedings, the arbitral tribunal should seek to encourage an amicable settlement of the dispute or of individual issues in dispute.

32.2 If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. If requested by the parties, the arbitral tribunal shall record the settlement in the form of an arbitral award on agreed terms, unless the contents of the settlement are in violation of public policy (ordre public).

32.3: An award on agreed terms shall be made in accordance with section 34 and shall state that it is an award. Such an award has the same effect as any other award on the merits of the case.

### **Section 33 Rendering of the arbitral award**

33.1: The arbitral tribunal shall conduct the proceedings expeditiously and shall render an award within a reasonable period of time.

33.2: In rendering the award, the arbitral tribunal is bound by the requests for relief made by the parties.

33.3: In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members.

33.4: If an arbitrator refuses to take part in the vote on a decision, the remaining arbitrators may take the decision without him, unless otherwise agreed by the parties. The remaining arbitrators shall decide by majority vote. The parties shall be given advance notice of the intention to make an award without the arbitrator who refuses to participate in the vote. In the case of other decisions, the parties shall be informed subsequent to the decision of the refusal to participate in the vote.

### **Section 34 Arbitral award**

34.1: The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

34.2: The award shall contain full identification of the parties to the arbitral proceedings and their legal representatives and the names of the arbitrators who have rendered the award.

34.3: The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 32 sub. 2.

34.4: The award shall state the date on which it was rendered and the place of arbitration as determined in accordance with section 21. The award shall be deemed to have been made on that date and at that place.

### **Section 35 Decision on costs**

35.1: Unless otherwise agreed by the parties, the arbitral tribunal shall also decide in the arbitral award which party is to bear the costs of the arbitral proceedings, including those costs incurred by the parties and which were necessary for the proper pursuit of their claim or defence.

35.2: In principle, the unsuccessful party shall bear the costs of the arbitral proceedings. The arbitral tribunal may, taking into consideration the circumstances of the case, and in particular where each party is partly successful and partly unsuccessful, order each party to bear his own costs or apportion the costs between the parties.

35.3: To the extent that the costs of the arbitral proceedings have been fixed, the arbitral tribunal shall also decide on the amount to be borne by each party. If the costs have not been fixed or if they can be fixed only once the arbitral proceedings are terminated, the decision shall be taken by means of a separate award.

35.4: Subsections 1, 2 and 3 of this section apply mutatis mutandis where the proceedings have been terminated without an arbitral award, provided the parties have not reached an agreement on the costs.

### **Section 36 Delivery of the arbitral award**

36.1: The arbitral tribunal shall provide a sufficient number of originals of the arbitral award. Without undue delay, the DIS Secretariat shall be supplied with one original of the award to keep on file as well as a sufficient number for delivery to the parties.

36.2: The DIS Secretariat delivers one original of the award to each party.

36.3: Delivery of the award to the parties may be withheld until the costs of the arbitral proceedings have been paid in full to the arbitral tribunal and to the DIS.

### **Section 37 Interpretation and correction of arbitral award**

37.1: Any party may request the arbitral tribunal

- to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature,
- to give an interpretation of specific parts of the award,
- to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

37.2: Unless otherwise agreed by the parties, the request shall be made within 30 days after receipt of the award. A copy of the request shall be delivered to the DIS Secretariat.

37.3: The arbitral tribunal should make the correction or give the interpretation within 30 days and make an additional award within 60 days.

37.4: The arbitral tribunal may also make a correction to the award on its own initiative.

37.5: Sections 33, 34 and 36 apply to correction or interpretation of the award or to an additional award.

### **Section 38 Effect of arbitral award**

The award is final and has the same effect between the parties as a final and binding court judgment.

### **Section 39 Termination of arbitral proceedings**

39.1: The arbitral proceedings are terminated by the final award, by an order of the arbitral tribunal pursuant to subsection 2 of this section or by the DIS Secretariat pursuant to subsection 3 of this section.

39.2: The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when

(1) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute; or

(2) the parties agree on the termination of the arbitral proceedings; or

(3) the parties fail to pursue the arbitral proceedings in spite of being so requested by the arbitral tribunal or when the continuation of the proceedings has for any other reason become impossible.

39.3: If nomination of an arbitrator or substitute arbitrator does not occur within the set time-limit and nomination by the DIS Appointing Committee is not requested by a party, the DIS Secretariat may terminate the proceedings after having consulted the parties.

### **Section 40 Costs of arbitral proceedings**

40.1: The arbitrators are entitled to fees and reimbursement of expenses as well as to value added tax levied on the fees or expenses. The parties are jointly and severally liable to the arbitral tribunal for payment of the administrative fee, notwithstanding any claim for reimbursement by one party against the other.

40.2 The fees shall be fixed by reference to the amount in dispute, which is to be assessed by the arbitral tribunal at its due discretion.

40.3 If proceedings are terminated prematurely, the arbitral tribunal may at its equitable discretion reduce the fees in accordance with the progress of the proceedings.

40.4 The DIS is entitled to an administrative fee as well as to any value added tax levied thereon. The parties are jointly and severally liable to the DIS for payment of the administrative fee, notwithstanding any claim for reimbursement by one party against the other.

40.5 The amount of fees and expenses shall be calculated in accordance with the schedule which forms part of the present Arbitration Rules.

40.6: If the amount in dispute is not specified in a statement of claim or counterclaim, the DIS or the arbitral tribunal, as the case may be, may assess the provisional administrative fees and advances at its due discretion.

### **Section 41 Loss of right to object**

A party who knows that any provision of these Arbitration Rules or any other agreed requirement under the arbitral procedure has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay, may not raise that objection later.

### **Section 42 Publication of the arbitral award**

The arbitral award may be published only with written permission of the parties and the DIS. Under no circumstances may the publication include the names of the parties, their legal representatives or the arbitrators or any other information specific to the arbitral proceedings.

### **Section 43 Confidentiality**

43.1: The parties, the arbitrators and the persons at the DIS Secretariat involved in the administration of the arbitral proceedings shall maintain confidentiality towards all persons regarding the conduct of arbitral proceedings, and in particular regarding the parties involved, the witnesses, the experts and other evidentiary materials. Persons acting on behalf of any person involved in the arbitral proceedings shall be obligated to maintain confidentiality.

43.2: The DIS may publish information on arbitral proceedings in compilations of statistical data, provided such information excludes identification of the persons involved.

### **Section 44 Exclusion of liability**

44.1: All liability of an arbitrator for any act in connection with deciding a legal matter is excluded, provided such act does not constitute an intentional breach of duty.

44.2: All liability of the arbitrators, the DIS, its officers and its employees for any other act or omission in connection with arbitral proceedings is excluded, provided such acts do not constitute an intentional or grossly negligent breach of duty.

### **Appendix to section 40 sub. 5 of the Arbitration Rules (in force as of 1 Jan 2005)**

#### **1) Amount in dispute up to 5,000.00 €**

The fee for the chairman of the arbitral tribunal or for a sole arbitrator shall amount to 1,365.00 € and for each co-arbitrator 1,050.00 €

2) Amounts in dispute from 5,000.00 € to 50.000,00 €

Amount in dispute	Fee for chairman of arbitral tribunal / sole arbitrator	Fee for each co-arbitrator
up to 6.000,00 EUR	1.560,00 EUR	1.200,00 EUR
up to 7.000,00 EUR	1.755,00 EUR	1.350,00 EUR
up to 8.000,00 EUR	1.950,00 EUR	1.500,00 EUR
up to 9.000,00 EUR	2.145,00 EUR	1.650,00 EUR
up to 10.000,00 EUR	2.340,00 EUR	1.800,00 EUR
up to 12.500,00 EUR	2.535,00 EUR	1.950,00 EUR
up to 15.000,00 EUR	2.730,00 EUR	2.100,00 EUR
up to 17.500,00 EUR	2.925,00 EUR	2.250,00 EUR
up to 20.000,00 EUR	3.120,00 EUR	2.400,00 EUR
up to 22.500,00 EUR	3.315,00 EUR	2.550,00 EUR
up to 25.000,00 EUR	3.510,00 EUR	2.700,00 EUR
up to 30.000,00 EUR	3.705,00 EUR	2.850,00 EUR
bis 35.000,00 EUR	3.900,00 EUR	3.000,00 EUR
up to 40.000,00 EUR	4.095,00 EUR	3.150,00 EUR
up to 45.000,00 EUR	4.290,00 EUR	3.300,00 EUR
up to 50.000,00 EUR	4.485,00 EUR	3.450,00 EUR

In the case of amounts in dispute exceeding 50.000,00 €, the fee for each co-arbitrator is calculated as follows:

- 3) For amounts more than 50,000.00 € up to 500,000.00 €  
a fee of 3,450.00 € plus 2% of the amount exceeding 50,000.00 €;
- 4) For amounts more than 500,000.00 € up to 1,000,000.00 €  
a fee of 12,450.00 € plus 1.4% of the amount exceeding 500,000.00 €;
- 5) For amounts more than 1,000,000.00 € up to 2,000,000.00 €  
a fee of 19,450.00 € plus 1% of the amount exceeding 1,000,000.00 €;
- 6) For amounts more than 2,000,000.00 € up to 5,000,000.00 €  
a fee of 29,450.00 € plus 0.5% of the amount exceeding 2,000,000.00 €;
- 7) For amounts more than 5,000,000.00 € up to 10,000,000.00 €  
a fee of 44,450.00 € plus 0.3% of the amount exceeding 5,000,000.00 €;
- 8) For amounts more than 10,000,000.00 € up to 50,000,000.00 €  
a fee of 59,450.00 € plus 0.1% of the amount exceeding 10,000,000.00 €;
- 9) For amounts more than 50,000,000.00 € up to 100,000,000.00 €  
a fee of 99,450.00 € plus 0.06% of the amount exceeding 50,000,000.00 €;
- 10) For amounts more than 100,000,000.00 €  
a fee of 129,450.00 € plus 0.05% of the amount exceeding 100,000,000.00 €;
- 11) If more than two parties are involved in the arbitral proceedings, the amounts of the arbitrators' fees pursuant to this schedule are increased by 20% for each additional party. The arbitrators' fees are increased by no more than 50% in total;
- 12) Upon filing of a counterclaim, the Appointing Committee of the DIS, if so requested by the arbitral tribunal and after having consulted the parties, may determine that the arbitrators' fees pursuant to Nos. 1) - 11) shall be calculated separately on the basis of the value of the claim and counterclaim.
- 13) In cases of high legal and/or factual complexity and in particular with regard to the time spent, the Appointing Committee of the DIS, if so requested by the arbitral tribunal and after having consulted the parties, may determine an appropriate increase of the arbitrators' fees of up to 50% of the fee pursuant to Nos. 1) - 12);
- 14) If a request for an interim measure of protection has been made to the arbitral tribunal pursuant to section 20, the arbitrators' fee shall be increased by 30% of the fee at the time of the request;
- 15) For the chairman of the tribunal and the sole arbitrator, fees are calculated by adding 30% to the fees pursuant to 3) to 14);
- 16) Reimbursement of expenses pursuant to Sec. 40 sub. 1 is calculated on the basis of such guidelines as are issued by the DIS in force at the time of commencement of the arbitral proceedings;
- 17) The amount of the provisional advance for the arbitral tribunal levied by the DIS Secretariat upon filing of the statement of claim pursuant to section 7 sub. 1 corresponds to the fees for a co-arbitrator pursuant to this schedule;
- 18) In the case of an amount in dispute up to 50,000.00 € the DIS administrative fee amounts to 2% of the amount in dispute; in case of an amount in dispute more than 50,000.00 € and up to 1,000,000.00 €



the DIS administrative fee amounts to 1,000.00 € plus 1% of the amount exceeding 50,000.00 € in the case of the amount in dispute exceeding 1,000,000.00 €, the administrative fee amounts to 10,500.00 € plus 0,5% of the amount exceeding 1,000,000.00 €. The minimum DIS administrative fee is 350.00 € the maximum fee is 25,000.00 €;

Upon filing a counterclaim, the amounts in dispute of claim and counterclaim are added for the purpose of assessing the DIS administrative fee. The DIS administrative fee for a counterclaim is calculated by deducting the DIS administrative fee from the administrative assessed according to the increased overall amount in dispute;

The minimum administrative fee for a counterclaim is 350.00 €, the maximum fee for claim and counterclaim is 37,500.00 €;

If more than two parties are involved in the arbitral proceedings, the DIS administrative fee set forth in this schedule is increased by 20% for each additional party; the maximum fee is 37,500.00 €;

19) If a statement of claim, a counterclaim or any other written pleadings is submitted to the DIS in any language other than German, English or French, the DIS may arrange for a translation. The costs for such translation may be added to the DIS administrative fee levied by the DIS pursuant to 15).

### **Appointing Committee of the DIS (DIS-Ernennungsausschuss)**

#### **Section 14 of the Statutes of the German Institution of Arbitration**

(1) The "Appointing Committee" consists of three members and three alternate members, who are appointed for a period of two years by the Board of Directors (Vorstand) assisted by the chairman of the Advisory Board (Beirat). Consecutive appointments are permitted. In the case of one or more members being temporarily unable to perform their duties, the alternate members in alphabetical order perform the functions of the members prevented from acting.

(2) The "Appointing Committee" nominates arbitrators and substitute arbitrators upon proposal of the Executive Committee (Geschäftsführung).

(3) The "Appointing Committee" also revokes the mandate of arbitrators and mediators, to the extent that the latter is provided for by the applicable arbitration rules.

(4) Further functions may be assigned to the "Appointing Committee".

(5) The "Appointing Committee" is not bound by directions. Its work is confidential. It decides by simple majority. In general, the decision is taken by written procedure.

(6) The members of the "Appointing Committee" who participate in any function in arbitral proceedings before the DIS cannot participate in decisions regarding such arbitral proceedings. A member of the "Appointing Committee" may not be nominated as arbitrator pursuant to subsection 2 of this section.

(7) The Executive Committee (Geschäftsführung) is not bound by directions with regard to its proposals pursuant to subsection 2 of this section.