

Announcement of Particular Procedural Features for the Administration of Arbitrations in View of the Covid-19 Pandemic

Second Edition dated 1 July 2020

Amendments as against First Edition dated 31 March 2020
to Paragraphs 10. (new) and 11.

Particular Procedural Features Covid-19

The Covid-19 pandemic has confronted the entire world with enormous challenges. In light of the current requirement that the *Case Management Team* work remotely and furthermore in the context of Article 2.2 of Annex 1 to the DIS Arbitration Rules, the DIS announces the following distinct procedural features for the administration of both currently pending and forthcoming arbitrations conducted pursuant to the 2018 DIS Arbitration Rules:

1. Organisational Adjustments in Our Case Management

The DIS considers it a priority to continue to carry out our Case Management as smoothly as possible notwithstanding the Covid-19 pandemic. The DIS has taken a number of measures to comply with the world-wide call for a reduction in person-to-person contact as a result of the Covid-19 pandemic, also with a view to safeguarding the health of DIS personnel.

- The DIS office in Bonn continues to be operational. Two members of the *Case Management Team* are currently working on the Bonn premises while all other personnel are working from home ("remote working"). The transition to remote working may cause delays in the administration of arbitrations.
- The DIS Berlin office is closed as of 18 March 2020 until further notice and our overnight mailbox in Berlin is not operational. As and when necessary, our Berlin office staff will render assistance on a temporary basis with the administration of arbitrations pursuant to the 2018 DIS Arbitration Rules. The names of such staff members will appear in correspondence sent by the DIS only in the event of a transfer of responsibility to them for a given case as *Counsel* or as *Case Administrator*. Such transfer will occur only in exceptional cases.

2. Abstention from Transmissions by Mail or Courier

Article 4.1 DIS Arbitration Rules already foresees transmission to the DIS electronically as the standard procedure. The DIS requests all participants in DIS proceedings to continue to communicate with the DIS primarily in electronic form, to our e-mail address at casemanagement@disarb.org.

To the greatest extent possible, participants in proceedings should refrain from the transmission of portable storage devices by mail or courier.

3. Inquiries via Telephone and Return of Telephone Inquiries

All members of the *Case Management Team* continue to be available by telephone. At the same time, however, the DIS requests all parties and arbitrators:

- To make any necessary telephone calls to the DIS during the afternoon hours to the extent possible;
- To use the direct-dial telephone number of the responsible *Counsel* or *Case Administrator* as indicated in correspondence from the DIS, and not the main telephone number of the DIS, and
- To make express mention of any special urgency requiring a return telephone call by the DIS.

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4. Article 4.9 DIS Arbitration Rules (Extension of Time Limits)

The DIS will take into account the impact of the Covid-19 pandemic in any decisions on requests for extension of time limits pursuant to Article 4.9 DIS Arbitration Rules.

Whenever in its correspondence the DIS sets a time limit the duration of which, in number of days, is not already provided for in the DIS Arbitration Rules, the DIS will, in the same correspondence, provide for an automatic extension of such time limit in those cases in which a request for an extension is made expressly based upon the Covid-19 pandemic and such request is sent to all participants in the proceedings. In such cases, a separate notification from the DIS respecting the extension of the time limit is not required.

5. Articles 5.1 and 5.4 DIS Arbitration Rules (Commencement of Arbitration, Hard Copies)

It is preferred that any arbitration be commenced by electronic transmission of the request for arbitration via e-mail to the following address: casemanagement@disarb.org.

The hard copies which are required pursuant to Article 4.2 DIS Arbitration Rules for each party, as well as all attachments thereto (*cf.* Article 4.2 (i) DIS Arbitration Rules) are to be sent exclusively to the DIS Office in Bonn, Marienforster Str. 52, 53177 Bonn, Germany.

Until further notice, the DIS will refrain from requesting a hard copy for itself of the request for arbitration without attachments (*cf.* Article 4.2 (i) DIS Arbitration Rules) pursuant to Article 5.4 DIS Arbitration Rules. Accordingly, for the present time the claimant need not file a hard copy intended for the DIS. As long as the requirements set forth in Article 6.1 DIS Arbitration Rules are met, the electronic transmission of the request for arbitration, with or without the attachments thereto, suffices for the commencement of the arbitration.

The above-referenced provisions also apply to the transmission of requests for arbitration to additional parties pursuant to Article 19 DIS Arbitration Rules as well as concerned others pursuant to Article 3.2 of the Supplementary Rules for Corporate Disputes (Annex 5 to the DIS Arbitration Rules).

Furthermore, it remains an option to file a request for arbitration via telefax sent to the following telefax number: +49 228 391815222 (please transmit only one copy in such cases).

6. Article 5.3 DIS Arbitration Rules (Invoices Submitted via E-mail as PDF)

In general, the DIS will issue invoices for its administrative fees only in the form of PDF documents via e-mail.

7. Article 27.2 DIS Arbitration Rules (Indicative Time Limit for Case Management Conference Commences with Receipt of Case File)

Whenever possible, the arbitral tribunal should hold a case management conference pursuant to Article 27.2 DIS Arbitration Rules within 21 days after the receipt by the last arbitrator of the case file from the DIS.

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8. Article 39.6 DIS Arbitration Rules (Notification of the Award)

Provided that all parties expressly agree, the DIS will carry out the notification of arbitral awards in electronic form.

When, in the absence of such agreement by the parties, the DIS notifies an arbitral award in its original hard copy form, such original hard copies will, in deviation from the practice heretofore, not bear the signature of a *Counsel* of the *Case Management Team* and they may not necessarily be bound.

9. Expedited Proceedings Pursuant to Annex 4

Article 1 of Annex 4 to the DIS Arbitration Rules provides that the final award shall be made at the latest six months after the conclusion of the case management conference. Owing to the Covid-19 pandemic, currently the scheduled dates for oral hearings are in some cases being postponed. If the above-referenced time-limit is not able to be maintained owing to the Covid-19 pandemic, then the arbitral tribunal shall, pursuant to Article 5 of Annex 4 to the DIS Arbitration Rules, inform the parties and the DIS and shall bring the arbitration to a conclusion as soon as possible. This provision expressly provides that the arbitral tribunal, in the case of non-compliance with the time limit of six months pursuant to Article 1 of Annex 4 to the DIS Arbitration Rules, shall not for that reason cease to have jurisdiction.

10. Value Added Tax on Fees and Expenses of Arbitrators for the Period 1 July 2020 to 31 December 2020

On 29 June 2020, the “Second Law on the Implementation of Tax-Related Relief Measures to Cope with the Corona Crisis (Second Corona Tax Relief Law)” was enacted. Thereby, the VAT tax rates are being reduced from 19 to 16 percent and from 7 to 5 percent respectively limited to the period of 1 July 2020 to 31 December 2020.

The following remarks are intended as a non-binding guide for arbitrators when determining the value added tax rates to be applied in their invoices made out to the parties.

a. Responsibility of Arbitrators for the Correctness of their Invoices Pursuant to the Tax Laws

Each arbitrator is alone responsible for the correctness pursuant to the tax laws of his or her invoices for fees and expenses made out to the parties. With regard to possible advance deductibility of taxes by the parties, the DIS recommends that all arbitrators, in the event of any lack of clarity owing to the change in law, consult in advance with the parties.

b. Possible Timing of Completion of Service by Arbitrators

According to the information currently available to the DIS, the following points in time could be considered decisive:

- in the case of a final award or of an award by consent, the date on which the award is deemed to have been made pursuant to Article 39.7 DIS Rules;
- in the case of termination of the arbitration by the arbitral tribunal pursuant to Article 42.2 DIS Rules, the date of the termination order of the arbitral tribunal; and
- in the case of termination of the arbitration by the DIS pursuant to Article 42.5 DIS Rules, the date of the decision of termination by the Arbitration Council of the DIS.

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c. Communications of the DIS concerning costs pursuant to Article 32 (j) DIS Arbitration Rules

With respect to any communication by the DIS concerning the costs of the arbitration pursuant to Article 32 (j) DIS Arbitration Rules, please note:

- To the extent it considers it appropriate to do so, in particular in order to avoid delay, the DIS shall communicate the fixing of the fees and expenses of arbitrators not including value added tax.
- Payments will be made on the basis of the value added tax rates declared in the invoices made out by the arbitrators to the parties or on the basis of the rates otherwise communicated to the DIS.

11. Period of Validity and Updates to the Present Announcement

The present announcement is valid from 1 April 2020.

Paragraph 10. has been newly included in the Second Edition and takes effect as of 1 July 2020. Paragraphs 1. to 9. remain unchanged.

The DIS will announce any further modifications or additions as a result of the dynamic further development of the Covid-19 pandemic on its website

www.disarb.org/en.

E-mails from the *Case Management Team* of the DIS will include a link to the current version of this announcement.

In the event this announcement should cease to apply, the DIS will make an express statement to such effect.

Berlin / Bonn, 1 July 2020