



DIS

Deutsche Institution für
Schiedsgerichtsbarkeit

DIS Supplementary Rules for Third-Party Notices (DIS-TPNR)

Effective as of 15 March 2024



DIS-TPNR:

**Unique solution
in arbitration
to avoid
the recourse trap**



the recourse trap

In arbitration, decisions have res judicata effect **only between the parties directly involved.**

If a party holds a claim for warranty or indemnification against a third party and loses the arbitration, that third party is not bound by the award.

The recourse creditor faces the **risk of losing not only the arbitration but also potential recourse proceedings**, a significant concern in sectors like supply chain and construction.



to avoid the recourse trap



In state court litigation, **third-party notices** are a **common solution** to avoid the recourse trap in several countries. They allow the recourse creditor to issue a third-party notice to its recourse debtor with the effect that the latter is allowed to support the former and participate in proceedings. In return, the recourse debtor cannot later contest the decision.

This avoids the recourse trap.



Unique solution in arbitration to avoid the recourse trap



This mechanism has been absent in arbitration – until now. The German Arbitration Institute (DIS) has pioneered a solution to this longstanding issue.

Effective since 15 March 2024, parties may agree on the DIS Third-Party Notice Rules (DIS-TPNR) to allow each other the issuance of third-party notices, ensuring a more **comprehensive, binding approach**.



Joinder is no solution

Institutional joinder rules often fall short of solving the recourse trap in arbitration. Joinder requires full party status and unanimous consent from all involved, which is difficult post-dispute.

The **DIS-TPNR** provide a better alternative by enabling third-party involvement **without the complexities of a full joinder process.**



Key advantages of the DIS-TPNR

- **Binding Outcomes:** Ensures that all parties, including third parties, are bound by the same award, promoting a unified, comprehensive resolution.
- **Simple Integration:** Incorporating the DIS-TPNR is as easy as referencing it in the arbitration agreement. This avoids the need for prolonged negotiations and separate terms.
- **Global Applicability:** The DIS-TPNR cater to both civil and common law traditions.



The DIS-TPNR in a nutshell



Scope of application



Admissibility and issuance



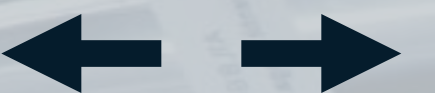
Participation of the third party



Addressing objections



Costs



The DIS-TPNR in a nutshell

Scope of application

The DIS-TPNR apply when the parties have **specifically included them in their arbitration agreement** (Art. 1.1).

DIS provides model clauses for **seamless integration** in contracts between the main party and its counterparty, and the main party and the third party.

Addressing objections

Admissibility and issuance

The main party can **issue a third-party notice** when it foresees a potential claim for warranty or indemnification or anticipates such a claim being made against it (Art. 2).

Notices must be submitted in writing to the DIS (Art. 3) before the tribunal is formed, with **third-party consent required for later notices** (Art. 4.4).

Costs

Participation of the third party

The recipient of a third-party notice can join the arbitration as an intervener, supporting but not contradicting the main party's position (Art. 6.4).

Even if the third party opts not to intervene, it is bound by the arbitral award (Art. 11), **safeguarding the recourse creditor from the recourse trap.**



The DIS-TPNR in a nutshell

Scope of application

Addressing objections

The validity of a third-party notice is assessed by the DIS or its Arbitration Council **for the purpose of tribunal constitution only** (Art. 6.2).

Objections must generally be raised after the tribunal is constituted, with findings deemed final (Art. 10.2).

The validity can be reviewed in later disputes only if new objections emerge (Art. 10.3)

Admissibility and issuance

Costs

The main party bears the DIS administrative fees caused by the third-party notice (Art. 13.1).

The tribunal allocates the third-party notice recipient's costs and any additional arbitrator fees between the main party and the third party (Art. 13.5).

Costs incurred due to intervention are treated as arbitration costs and allocated in the final award (Art. 13.4).

Participation of the third party



Interests of all parties carefully considered

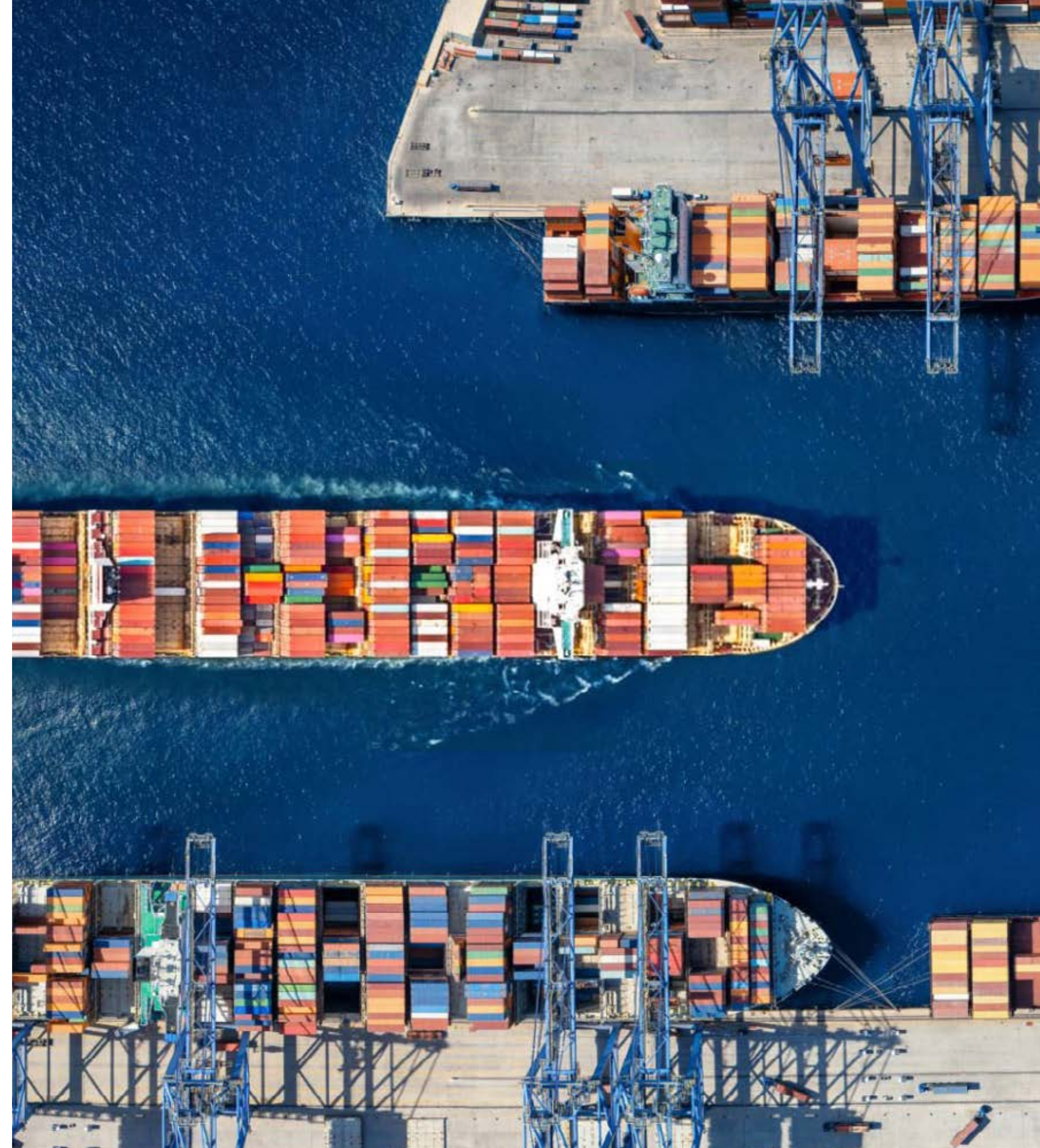


The DIS-TPNR have been designed with the interests of all parties in mind:

- **Main Party:** Gains protection from the recourse trap.
- **Third Party:** Engages in tribunal constitution and supports the main party, reducing the likelihood of subsequent recourse.
- **Opposing Party:** Faces limited additional risk, without the fear of unexpected third-party claims (like in a joinder scenario).



The DIS-TPNR:
**A Step Forward
in Arbitration**



The **DIS-TPNR**, a comprehensive practice note with further explanations, and model clauses are available at www.disarb.org

DIS-TPNR



Practice note



Model clauses



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