

# DIS

## **DIS Rules on Expert Determination**



# DIS Rules on Expert Determination

(in force as from May 1, 2010)

DIS

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**Deutsche Institution für Schiedsgerichtsbarkeit**

## AGREEMENT ON EXPERT DETERMINATION AND ARBITRATION\*

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The German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V., DIS) advises all parties wishing to obtain an expert determination with preliminary binding effect in order to clarify a dispute and wishing to make arrangements for the regulation of the conflict situation by reference to the DIS Rules on Expert Determination already at the conclusion of the contract, to use the following agreement on expert determination and arbitration:

**“With respect to all disputes arising out of or in connection with the contract (... description of the contract ...) expert determination proceedings pursuant to the Rules on Expert Determination of the German Institution of Arbitration (DIS) (DIS-SchGO) shall be conducted.**

**Upon termination of the expert determination proceedings, all disputes 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; if the binding effect of a decision under the DIS-SchGO is not observed, the arbitral proceedings are conducted as Expedited Proceedings in accordance with Annex 4 to the DIS Arbitration Rules, in which case the entitled party may also have recourse to the ordinary courts of law.”**

The following points should be considered:

- In the proceedings pursuant to the DIS-SchGO, the number of arbitration experts is ...
- The place of arbitration is ...
- The number of arbitrators is ...
- The applicable substantive law is ...
- The language of the arbitral proceedings is ...

It should be noted that an agreement on the conduct of expert determination proceedings pursuant to the DIS Rules on Expert Determination may be concluded any time, also with regard to already existing disputes.

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\* Translation from German. Only the German text is authoritative.

**DIS RULES ON EXPERT DETERMINATION  
(DIS-SchGO)  
(preliminary binding decision)**

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**PART 1 – SCOPE OF APPLICATION**

**Section 1  
Scope of application**

- 1.1 The Rules on Expert Determination set forth herein apply where the parties wish to obtain a preliminary binding expert determination to clarify a dispute in connection with a contract (Main Contract) and for this purpose have agreed upon proceedings pursuant to the Rules on Expert Determination of the German Institution of Arbitration.
- 1.2 Unless otherwise agreed by the parties, the Rules on Expert Determination in effect on the date of commencement of the expert determination proceedings shall apply to the dispute.

## **PART 2 – PROCEEDINGS**

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### **Section 2**

#### **Initiation and commencement of the proceedings, substantiation of the request**

- 2.1 The party wishing to initiate expert determination proceedings (applicant) shall file a written request to obtain an expert determination pursuant to the DIS Rules on Expert Determination with the DIS Main Secretariat. Upon filing such a request with the DIS Main Secretariat, the applicant shall send a copy of the request to the other party of the agreement pursuant to section 1 subsection 1 (opponent). The request shall be fully substantiated.
- 2.2 The request shall be submitted in a number of copies at least sufficient to provide one copy for each arbitration expert and the DIS. If the number of copies is insufficient, the DIS Main Secretariat requests the applicant to make a corresponding supplementation and sets a time-limit for compliance. Upon filing the request the applicant shall pay the DIS procedural fee pursuant to the schedule of costs (appendix to section 30 subsection 6) in force on the date of receipt of the request by the DIS Main Secretariat. The DIS Main Secretariat invoices the applicant for the DIS procedural fee and, if payment has not already been made, sets a time-limit for payment.
- 2.3 The expert determination proceedings commence upon receipt of the request by the DIS Main Secretariat (subsection 1), provided that within the time-limits set by the DIS, which may be subject to reasonable extension, the DIS has received the number of required copies of the request pursuant to subsection 1 and the DIS procedural fee pursuant to subsection 2 has been paid. The DIS informs the parties about the commencement of the proceedings without undue delay.

### **Section 3**

#### **Expert determination proceedings with more than two parties**

- 3.1 If the request for expert determination provides that more than one other party within the meaning of section 2 subsection 1 or further parties who are not a party to the agreement pursuant to section 1 subsection 1 shall be involved in the proceedings, the applicant shall send the request to each of these parties.

- 3.2 The involvement of further parties who are not parties to the agreement pursuant to section 1 subsection 1 requires their consent and the consent of the parties to the agreement pursuant to section 1 subsection 1 who are involved in the proceedings.
- 3.3 The proceedings are carried out between the applicant and the parties involved in the proceedings pursuant to section 3 subsections 1 and 2 (opponents).

## **Section 4**

### **Number of arbitration experts**

- 4.1 Depending upon the agreement of the parties, the expert determination shall be conducted by one or three arbitration experts.
- 4.2 If the parties have not agreed on the number of arbitration experts, the expert determination shall be conducted by a sole arbitration expert.
- 4.3 Insofar as the following rules refer to the panel of arbitration experts or the chairman, they shall also apply mutatis mutandis to the sole arbitration expert in proceedings with a sole arbitration expert.

## **Section 5**

### **Qualifications of arbitration experts**

- 5.1 Only natural persons may be nominated as arbitration experts. Upon request, the DIS will make suggestions for the selection of arbitration experts.
- 5.2 The chairman of the panel of arbitration experts or the sole arbitration expert shall be a lawyer.

## **Section 6**

### **Nomination and confirmation of arbitration experts**

- 6.1 The following applies to expert determination proceedings with a sole arbitration expert:
  - (1) Within two weeks after commencement of the expert determination proceedings (section 2 subsection 3), the parties shall agree on the sole arbitration expert and notify the DIS thereof.
  - (2) If the parties have not agreed on the sole arbitration expert within two weeks after commencement of the proceedings, each party may request the nomination of a sole arbitration expert by the DIS Appointing Committee. Upon filing the request,



the requesting party shall pay to the DIS the fee for nomination of an arbitration expert pursuant to the schedule of costs (appendix 1 to section 30 subsection 6) in force on the date of receipt of the request by the DIS Main Secretariat.

6.2 The following applies to expert determination proceedings with three arbitration experts:

- (1) The applicant shall nominate an arbitration expert in his request for obtaining an expert determination (section 2 subsection 1). Multiple applicants shall jointly nominate one arbitration expert.
- (2) Within two weeks after commencement of the proceedings, the opponent shall inform the DIS and the applicant about its nomination of an arbitration expert (section 2 subsection 3). Multiple opponents shall jointly nominate one arbitration expert.
- (3) If the DIS Main Secretariat does not receive a nomination from the opponent within two weeks after commencement of the proceedings, the applicant may request the nomination by the DIS Appointing Committee. Upon filing the request the applicant shall pay to the DIS the fee for nomination of an arbitration expert pursuant to the schedule of costs (appendix 1 to section 30 subsection 6) in force on the date of receipt of the request by the DIS Main Secretariat. A nomination is still timely after expiry of the period of two weeks as long as the DIS Main Secretariat receives such nomination prior to a request by the applicant for nomination by the DIS Appointing Committee.
- (4) If several opponents fail to agree on a joint nomination of an arbitration expert within two weeks, the DIS Appointing Committee nominates two arbitration experts upon request of a party. A nomination made by the applicant side is set aside by the DIS Appointment Committee's nomination. Upon filing the request, the requesting party shall pay to the DIS a double fee for nomination of an arbitration expert pursuant to the schedule of costs (appendix 1 to section 30 subsection 6) in force on the date of receipt of the request by the DIS Main Secretariat.
- (5) The two arbitration experts nominated pursuant to nos. (1) – (4) shall jointly make proposals to the parties for the chairman of the panel of arbitration experts within a time-limit of 30 days after confirmation (subsection 9) of the last of the two arbitration experts. If both parties agree on a proposal, one of the parties shall nominate the proposed

person to the DIS. If the arbitration experts nominated pursuant to nos. (1) – (4) do not make a joint proposal for the chairman to the parties within the time-limit of 30 days, or if the parties fail to agree on the nomination of a proposed person to the DIS within 15 days after receipt of a joint proposal by the last of the two parties, each party may request the nomination of the chairman by the DIS Appointing Committee. Upon filing the request for nomination the requesting party shall pay to the DIS the fee for nomination of an arbitration expert pursuant to the schedule of costs (appendix 1 to section 30 subsection 6) in force on the date of the receipt of request by the DIS Main Secretariat.

- (6) Each arbitration expert may discuss the choice of the chairman with the party which has nominated him.
- 6.3 The DIS Appointing Committee takes into consideration the qualifications required, necessary language skills, if applicable, as well as other criteria submitted by the parties when nominating an arbitration expert.
- 6.4 The DIS shall send the request in writing and these Rules on Expert Determination to each nominated arbitration expert.
- 6.5 Each arbitration expert 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.
- 6.6 Each person who is nominated as arbitration expert shall without undue delay notify the DIS Main Secretariat of his acceptance of the office as arbitration expert and declare whether he fulfills the qualifications, if any, agreed upon by the parties. Such person shall disclose all circumstances likely to give rise to doubts as to his impartiality or independence. The DIS Main Secretariat informs the parties accordingly.
- 6.7 If circumstances are apparent from an arbitration expert's declaration, which are likely to give rise to doubts as to his impartiality or independence or the fulfillment of agreed qualifications, the DIS Main Secretariat grants the parties the opportunity to comment within an appropriate time-limit.
- 6.8 An arbitration expert shall disclose to the parties and the DIS Main Secretariat circumstances likely to give rise to doubts as to his impartiality or independence without undue delay throughout the expert determination proceedings.

- 6.9 The DIS Secretary General may confirm the nominated arbitration expert as soon as the DIS Main Secretariat receives the arbitration expert's declaration of acceptance and no circumstances likely to give rise to doubts regarding his impartiality or independence or the fulfillment of agreed qualifications are apparent from the declaration, or if within the time-limit set by subsection 7 no party objects to the confirmation of that arbitration expert. In all other cases the DIS Appointing Committee decides upon application on the confirmation of the nominated arbitration expert. Upon filing the requests, the requesting party shall pay to the DIS the fee for the decision on confirmation of an arbitration expert pursuant to the schedule of costs (appendix 1 to section 30 subsection 6) in force on the date of receipt of the request by the DIS Main Secretariat.
- 6.10 Upon appointment of all arbitration experts, the panel of arbitration experts is constituted. The DIS Main Secretariat informs the parties of the constitution of the panel of arbitration experts.

## **Section 7**

### **Challenge of an arbitration expert**

- 7.1 An arbitration expert 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 arbitration expert nominated by it, or in whose nomination it has participated, only for reasons of which it becomes aware after the nomination has been made.
- 7.2 The challenge shall be notified and substantiated to the DIS within two weeks of being advised of the constitution of the panel of arbitration experts pursuant to section 6 subsection 10 or of the time at which the party learns of the reason for challenge. The DIS Main Secretariat informs the arbitration experts and the other party of the challenge and sets a reasonable time-limit for comments from the challenged arbitration expert and the other party. If the challenged arbitration expert 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 apply to the DIS Main Secretariat within two weeks for a decision of the DIS Appointing Committee on the challenge, unless otherwise agreed by the parties. Upon filing the request, the requesting party shall pay to the DIS the fee for the decision on the challenge of an arbitration

expert pursuant to the schedule of costs (appendix 1 to section 30 subsection 6) in force on the date of receipt of the request by the DIS Main Secretariat. The decision of the DIS Appointing Committee is not subject to appeal.

- 7.3 If the other party agrees to the challenge, or if the arbitration expert withdraws from his office after being challenged, or if the application of challenge has been granted, a substitute arbitration expert shall be nominated. Section 6 applies *mutatis mutandis* to the nomination and confirmation of the substitute arbitration expert.

## **Section 8**

### **Default of an arbitration expert**

- 8.1 If an arbitration expert 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 arbitration expert does not withdraw from his office, or if the parties cannot reach agreement on the termination of his mandate, any party may apply to the DIS Main Secretariat for a decision of the DIS Appointing Committee on the termination of the mandate. Upon filing the requests, the requesting party shall pay to the DIS the fee for the decision on termination of the mandate of an arbitration expert pursuant to the schedule of costs (appendix 1 to section 30 subsection 6) in force on the date of receipt of the request by the DIS Main Secretariat. The decision of the DIS Appointing Committee is not subject to appeal.
- 8.2 If the mandate of an arbitration expert is terminated, a substitute arbitration expert shall be nominated. Section 6 applies *mutatis mutandis* to the nomination and confirmation of the substitute arbitration expert.
- 8.3 If, pursuant to subsection 1 of this section or section 7 subsection 2, an arbitration expert withdraws from his office or a party agrees to the termination of the mandate of an arbitration expert, this does not imply acceptance of the validity of any ground referred to in subsection 1 or section 7 subsection 1.

## **Section 9**

### **Reply to the request**

- 9.1 The opponent shall reply in writing to the request within six weeks after commencement of the proceed-

ings (section 2 subsection 3) and shall send its reply to the applicant and the arbitration experts.

- 9.2 The time-limit of six weeks applies even if not all arbitration experts have been confirmed. In this case, the opponent shall send its reply to the applicant and the arbitration experts already confirmed. The opponent shall send its reply to arbitration experts confirmed after the expiry of the time-limit of six weeks without undue delay after their confirmation.

## **Section 10**

### **Further briefs**

- 10.1 The applicant may comment in writing on the reply to the request within three weeks after its receipt. The opponent may answer the comment in writing within three weeks after its receipt.
- 10.2 The time-limit of three weeks for submission of further briefs pursuant to subsection 1 applies even if not all arbitration experts have been confirmed. In this case, the applicant and/or the opponent shall send comments to the other party, respectively, and to the arbitration experts already confirmed. The applicant and/or the opponent shall send comments to arbitration experts which have been confirmed after the expiry of the time-limit of six weeks without undue delay after their confirmation.
- 10.3 Further briefs are only admissible if the arbitration experts expressly request the parties to file them (section 15 subsection 3).

## **Section 11**

### **Submissions of the parties, correspondence**

- 11.1 The submission in the substantiation of the request and the reply to the request, respectively, shall be complete. The arbitration experts are free to disregard submissions which, according to the arbitration experts' evaluation, could have been made in an earlier brief.
- 11.2 The parties shall file briefs and exhibits in hardcopy; additional copies in electronic form are permissible.
- 11.3 Correspondence between the arbitration experts and the parties may be conducted by email. The parties shall provide the arbitration experts with their respectively binding email addresses within a week after confirmation of the arbitration experts.

11.4 All briefs, documents or other communications which are submitted to the arbitration experts by one of the parties shall be simultaneously submitted to the other party.

## **Section 12**

### **Compliance with time-limits**

12.1 The time-limits for the reply to the request (section 9 subsection 1) and for further briefs (section 10) are binding upon the parties. They are not subject to any extension, even if serious reasons are submitted, unless otherwise agreed by the parties. Section 13 subsection 2 remains unaffected.

12.2 The arbitration experts are free to disregard briefs which have been filed late.

## **Section 13**

### **Documents, expert reports**

13.1 The parties may submit documents, written witness statements and expert reports with their briefs.

13.2 The following applies to the submission of expert reports:

- (1) The applicant may submit an expert report with his request. In such case the opponent will be granted an adequate time-limit for obtaining a counter-report.
- (2) In the event that the opponent submits an expert report which in the arbitration experts' opinion is not limited to a reply to the applicant's expert report, the applicant shall, upon its request, be granted an appropriate time-limit for obtaining a counter-report.
- (3) Further expert reports may not be submitted with further briefs or in any other way; expert reports which are nonetheless submitted shall be disregarded by the arbitration experts.
- (4) The time-limits which are granted pursuant to nos. (1) and (2) may not cause the six-month time-limit set forth in section 26 subsection 2 to be exceeded.

## **Section 14**

### **Oral hearing**

- 14.1 An oral hearing shall be held if requested by a party. In the absence of such a request, the arbitration experts decide at their discretion whether to hold an oral hearing.
- 14.2 The parties shall ensure that at the hearings they are represented by employees who are sufficiently familiar with the subject-matter in dispute. They may bring third persons who can contribute to clarifying the facts to the oral hearing. This shall be notified to the arbitration experts and the other party in due time before the hearing.
- 14.3 Each party may make the participation of third persons dependent upon that person's written undertaking to keep the contents of the oral hearing confidential.
- 14.4 The arbitration experts may interview any person who they believe can contribute to the clarification of the facts.
- 14.5 The arbitration experts shall have discretion to decide upon such an interview and upon its recording. They shall also have discretion to decide whether to allow questions by the parties or by their representatives at such an interview.
- 14.6 The oral hearing may also be carried out if a party fails to appear at the oral hearing even though such party has been timely informed of the date of the hearing.

## **Section 15**

### **Further organization of the proceedings**

- 15.1 Apart from the rules set forth above, the arbitration experts may organize the proceedings at their discretion. They may request the submission of documents, carry out a site inspection and make proposals for amicable settlement.
- 15.2 The appointment of experts or other specialists by the arbitration experts is only possible with the parties' consent.
- 15.3 The arbitration experts may grant the parties an opportunity to comment in writing on certain questions within a time-limit fixed by the arbitration experts.
- 15.4 The chairman of the panel of arbitration experts presides over the proceedings. He may decide alone on

individual procedural questions, if so authorized by the other arbitration experts.

## **Section 16**

### **Equal treatment, right to be heard**

The parties shall be treated equally. Each party shall be given full opportunity to present its case.

## **Section 17**

### **Decisions**

- 17.1 In the event that a party does not make any written submissions or exceeds time-limits for the submission of briefs, the arbitration experts may take a decision based on the record.
- 17.2 The arbitration experts shall provide reasons in writing for all decisions which do not merely relate to procedural questions.
- 17.3 In expert determination proceedings with three arbitration experts, any decision of the panel of arbitration experts shall be made by the majority of its members unless otherwise agreed by the parties.
- 17.4 An overruled arbitration expert may record his dissenting opinion in writing; this dissenting opinion shall be sent to the parties together with the majority vote.
- 17.5 The arbitration experts may make an order for payment dependent upon the provision of a security by the advantaged party.
- 17.6 Decisions shall be taken as quickly as possible, normally within four weeks after the oral hearing or after receipt of the last brief, as the case may be, and at the latest six months after the commencement of proceedings (section 2 subsection 3), unless both parties have agreed to an extension (section 26 subsection 2).
- 17.7 The arbitration experts shall provide a sufficient number of originals of all decisions. Without undue delay, the DIS Main Secretariat shall be supplied with one original to keep on file as well as a sufficient number for delivery to the parties. The DIS Main Secretariat delivers one original of all decisions to the parties. The DIS informs the parties of the date on which the respective other party has received the decision without undue delay.



## **Section 18**

### **Correction and interpretation of a decision**

- 18.1 Any party may request the chairman of the panel of arbitration experts to correct computation errors, clerical errors or misprints or any errors of a similar nature in a decision by the arbitration experts, or to give an interpretation of the decision.
- 18.2 Such a request shall be made to the chairman within one month after receipt of the decision; otherwise, the request is not admissible.
- 18.3 The arbitration experts may also make a correction of the decision on their own initiative.
- 18.4 The other party shall be granted the opportunity to comment on the request to the extent necessary and within a short time-limit fixed by the chairman.
- 18.5 The arbitration experts shall decide on the request within one month after expiry of the time-limit under subsection 4. In the event that no such decision is rendered within one month, the request shall be deemed to have been dismissed.

## **Section 19**

### **Applicable law**

The arbitration experts shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the subject-matter of the dispute. Failing any such designation by the parties, the arbitration experts shall apply the law of the state which they deem appropriate.

### **Section 20 Preliminary rulings**

20.1 Upon a party's request, the arbitration experts may issue preliminary rulings in the following cases:

- (1) Continuation of works necessary for an orderly performance of the contract;
- (2) Performance of services necessary for an orderly performance of the contract and over which the parties are in dispute with respect to additional payment obligations;
- (3) Performance of acceleration measures in order to avoid or reduce delays;
- (4) Partial payments for services rendered;
- (5) Prohibition of the liquidation of securities (bonds, guarantees, bails etc.);
- (6) In other cases where the effects on the performance of the contract is tantamount to the above-mentioned cases.

Such preliminary rulings must be related to the subject-matter of the expert determination proceedings.

20.2 Before issuing a preliminary ruling, the parties shall normally be granted the opportunity to present their case within a time-limit fixed by the arbitration experts. In the exceptional case where a preliminary ruling is issued without granting the parties the opportunity to present their case, the parties shall be granted this opportunity without undue delay after the issuing of the preliminary ruling. Apart from that, the arbitration experts organize the proceedings at their discretion.

20.3 The parties shall comply with the preliminary rulings until the final decision of the arbitration experts is rendered.

20.4 The arbitration experts may impose conditions on a preliminary ruling; in particular, they may issue an order for payment dependent upon the provision of security by the advantaged party or fix a provisional remuneration for services to be performed.

20.5 The arbitration experts shall decide on a request for the issuing of a preliminary ruling by way of order. Section 17 subsection 7 applies mutatis mutandis.

20.6 The non-observance of a preliminary ruling constitutes an intentional and severe breach of contract.

The consequences of the breach are determined by the provisions of the Main Contract. Such breach of contract exists irrespective of whether a(n) (arbitration) court declares the preliminary decision of the arbitration experts to be justified or unjustified. In the event that the non-observance of a preliminary ruling leads to a delay of the project, the contractual party obligated to perform shall be in default even if the (arbitration) court later confirms a right to refuse performance.

- 20.7 No intentional and severe breach of contract shall be assumed only in those cases where the proceedings regarding the request for a preliminary ruling suffer from a defect which, in corresponding arbitration proceedings, would lead to the setting-aside of an award (section 1059 subsection 2 no. 2 German Code of Civil Procedure).
- 20.8 An intentional and severe breach of contract pursuant to subsection 6 does not, as such, justify a termination of the Main Contract for good cause. Further grounds for termination remain unaffected.
- 20.9 Preliminary rulings lose their effect upon the rendering of the final decision by the arbitration experts. To the extent that a regulation is still necessary, the arbitration experts shall make the necessary determinations in their final decision.

### **Section 21**

#### **Counterclaims, partial decisions**

- 21.1 The opponent may only assert counterclaims or declare a set-off with a counterclaim in its reply to the request. Counterclaims or declarations of set-off which are made after the reply to the request shall not be considered by the arbitration experts.
- 21.2 If the opponent asserts counterclaims, the provisions stated above apply *mutatis mutandis*. The applicant shall comment on the counterclaims asserted in the reply to the request within six weeks after its receipt. The opponent may answer the applicant's comment to the asserted counterclaims within three weeks after its receipt; the applicant may respond to this answer within three weeks after its receipt.
- 21.3 The arbitration experts may render partial decisions on such claims or counterclaims that are ready to be decided.

### **Section 22**

#### **Binding effect**

- 22.1 Decisions within the meaning of sections 17 and 21 subsection 3 are binding on the parties. Their binding effect ceases if and insofar as they are set aside or altered by a decision of a(n) (arbitration) court. The binding effect of a preliminary ruling ceases in such cases where it is set aside by a decision of the arbitration experts.
- 22.2 The non-observance of a decision of the arbitration experts by a party constitutes an intentional and severe breach of contract. The consequences of the breach are determined by the rules of the Main Contract. Such breach of contract persists irrespective of whether a(n) (arbitration) court declares the decision by the arbitration experts to be justified or unjustified. In the event that the non-observance of a decision leads to a delay of the project, the contractual party who is obligated to perform shall be in default even if the (arbitration) court later confirms a right to refuse performance.
- 22.3 No intentional and severe breach of contract shall be assumed only in those cases where the proceedings suffer from a defect which in corresponding arbitration proceedings would lead to the setting-aside of an

award (section 1059 subsection 2 no. 2 German Code of Civil Procedure).

- 22.4 A party who has carried out or refrained from carrying out legal acts in accordance with the decision in reliance upon the binding effect of that decision, is not obligated to pay damages to the other party.

## **Section 23**

### **Declaration of non-recognition**

- 23.1 A party wishing to have a decision reviewed in (arbitration) court proceedings shall notify the DIS in writing that it does not recognize the decision in full or in part (declaration of non-recognition). The DIS delivers the declaration of non-recognition to the other party and the arbitration experts without undue delay.
- 23.2 The declaration of non-recognition must be received by the DIS within a month following receipt of the decision by the non-recognizing party (section 17 subsection 7). Otherwise the decision becomes final and binding. It is no longer subject to appeal by (arbitration) action, not even with the assertion of an obvious inequity or obvious incorrectness or a breach of the right to be heard or other procedural breach.
- 23.3 The time-limit of one month for the declaration of non-recognition is not extended by the filing of a request for correction or interpretation (section 18).
- 23.4 Both parties are entitled to file a claim (in arbitration) if a declaration of non-recognition is made. A declaration of non-recognition may only be withdrawn with the other party's consent.
- 23.5 In the event that the binding effect pursuant to subsection 2 is not observed, the entitled party may seek the performance of the obligation established by the arbitration experts in court proceedings even if there is an arbitration agreement. In the event that arbitration proceedings pursuant to the DIS Arbitration Rules are instituted on the basis of an arbitration agreement, expedited proceedings pursuant to the Supplementary Rules for Expedited Proceedings shall be carried out.

## **Section 24**

### **Interest**

- 24.1 In the event that payment obligations which have been determined by the arbitration experts are not fulfilled, the payer shall pay default interest in the amount of

10 percentage points above the base interest rate per year starting from the date of receipt of the decision by the arbitration experts. The same applies to the decision on costs.

- 24.2 If services have been performed on the basis of a decision by the arbitration experts without remuneration, for which according to the decision of the (arbitration) court there was a claim for remuneration, the claim for remuneration shall bear interest at the rate of 5 percentage points above the base interest rate per year as from the date of the billable performance of the services.
- 24.3 If payments have been effected on the basis of a decision by the arbitration experts to which the recipient of these payments was – according to the decision of the (arbitration) court – not entitled, the repayment claim shall bear interest at the rate of 5 percentage points above the base interest rate per year as from the date of receipt of payment.
- 24.4 Further-reaching statutory or contractual claims for interest remain unaffected.

## **Section 25**

### **Temporary waiver of action**

- 25.1 The parties shall not bring an (arbitration) action for such claims that are still subject to pending expert determination proceedings.
- 25.2 This does not apply to claims for which the arbitration experts have not dispatched a decision to the DIS within six months after commencement of expert determination proceedings, unless both parties have agreed to an extension.
- 25.3 The expert determination agreement does not preclude the parties from applying to a court for interim or securing measures relating to the subject-matter of the expert determination proceedings before or after the commencement of the expert determination proceedings.

## **Section 26**

### **Termination of proceedings**

- 26.1 The expert determination proceedings are terminated upon receipt of the arbitration experts' decision by the parties or, in the case of a partial decision, upon receipt of the final decision; the date of receipt by the last receiving party is decisive.
- 26.2 The expert determination proceedings are terminated at the latest six months after commencement of the proceedings (section 2 subsection 3), unless both parties have agreed to an extension. The six-month time-limit is complied with if the arbitration experts have dispatched the decision to the DIS Main Secretariat pursuant to section 26 subsection 1 prior to expiry of the six-month time-limit.
- 26.3 An early termination of the expert determination proceedings by withdrawal of the request for expert determination requires the opponent's consent.

## **Section 27**

### **Statute of limitations**

- 27.1 The period of limitation is suspended for such claims that are subject to expert determination proceedings from the commencement of the expert determination proceedings (section 2 subsection 3).
- 27.2 The suspension ceases six months after the end of the month in which the expert determination proceedings have been terminated.

### **Section 28 Confidentiality**

- 28.1 The parties, the arbitration experts and the persons at the DIS Main Secretariat involved in the administration of the expert determination proceedings shall maintain confidentiality towards all persons regarding the expert determination proceedings and, in particular, regarding the parties involved and the documents exchanged. Persons acting on behalf of any person involved in the proceedings shall be obligated to maintain confidentiality.
- 28.2 This does not apply to information or documents which were known before the expert determination proceedings or which demonstrably would otherwise have become known.
- 28.3 Contractual confidentiality or secrecy obligations remain unaffected.
- 28.4 Each party is entitled to submit briefs or other documents which are filed in the expert determination proceedings, as well as decisions by the arbitration experts in subsequent (arbitration) court proceedings. However, oral statements of the parties or persons who have been interviewed for informational reasons may not be cited in (arbitration) court proceedings. In the event that statements are so cited, the (arbitrators) judges may not consider them.
- 28.5 The arbitration experts may not be called as witnesses for facts which were disclosed to them during the expert determination proceedings. This does not apply to such facts which have become known to the arbitration experts on the occasion of a site inspection.
- 28.6 The DIS may publish information on expert determination proceedings in a compilation of statistical data, provided such information excludes identification of the persons involved.

### **Section 29 Exclusion of liability**

The arbitration expert, the DIS, its officers and employees are only liable for intentional misconduct.



## **PART 6 – COSTS**

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### **Section 30 Costs**

- 30.1 The arbitration experts shall decide which party is to bear the costs of the expert determination proceedings. In principle, the unsuccessful party shall bear the costs of the expert determination proceedings. The panel of the arbitration experts 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 its own costs or apportion the costs between the parties. Unless otherwise agreed by the parties, each party shall bear its own costs (handling charges, legal fees).
- 30.2 The arbitration experts are entitled to a fee and reimbursement of expenses as well as to VAT levied on the fee or expenses, if applicable. The parties are jointly and severally liable to the arbitration experts for payment of the costs of the proceedings, notwithstanding any claim for reimbursement by one party against the other.
- 30.3 The arbitration expert's fee shall be measured by the time spent by him.
- 30.4 The DIS is entitled to charge a procedural fee and a fee (fees) for the nomination or decision on confirmation or challenge or termination of the mandate of an arbitration expert including any VAT, if applicable. The parties are jointly and severally liable to the DIS for payment of these fees, notwithstanding any claim for reimbursement of one party against the other.
- 30.5 The arbitration experts are entitled to reasonable advance payments. These advance payments shall be paid by the parties in equal shares. The arbitration experts determine the extent of reimbursement of the advance payments by the party obligated to pay in the decision on costs.
- 30.6 The amount of the fee of the arbitration experts and the DIS fees ensues from the appendix which is part of these Rules on Expert Determination.
- 30.7 The decision on costs may be separately challenged by a claim (in arbitration). The challenging party shall file the claim within four weeks upon receipt of the decision on costs; otherwise the decision on costs becomes final and binding after the expiry of the four weeks time-limit.

### TABLE OF COSTS FOR DIS EXPERT DETERMINATION PROCEEDINGS

#### 1. DIS fees

- 1.1 The procedural fee (section 2 subsection 2) amounts to € 500.00.
- 1.2 The fee for nomination of an arbitration expert (section 6 subsection 1 no. (2), section 6 subsection 2 nos. (3), (4) and (5)) amounts to € 250.00 per arbitration expert.
- 1.3 The fee for the decision on the confirmation (section 6 subsection 9), challenge (section 7 subsection 2) or termination of the mandate (section 8 subsection 1) of an arbitration expert amounts to € 250.00.

#### 2. Arbitration experts' fees

The fee of an arbitration expert amounts to € 300.00 per hour.

#### 3. VAT

The fees specified in nos.1 and 2 are subject to the applicable VAT.



# DIS

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