

# DIS

## **UNCITRAL Arbitration Rules – administered by the DIS**



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Arbitration Rules -  
administered by the DIS

DIS

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**Print: September 2014**  
**Deutsche Institution für Schiedsgerichtsbarkeit**  
**German Institution of Arbitration**  
**[www.dis-arb.de](http://www.dis-arb.de)**  
**[dis@dis-arb.de](mailto:dis@dis-arb.de)**

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**Deutsche Institution für Schiedsgerichtsbarkeit**

## INTRODUCTION

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Founded in 1992, the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V., DIS) promotes arbitration and provides a uniform service for all arbitration-related matters across Germany. Since that time, the DIS has provided the DIS Arbitration Rules for the resolution of disputes. The current DIS Arbitration Rules entered into force in 1998 and the DIS has gained great experience in the administration of national and international arbitral proceedings alike. In addition, the DIS promotes academic research on arbitration and alternative dispute resolution and provides information and advice on all aspects of arbitration to businesses, the legal profession, government bodies and arbitration organizations abroad.

The Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), approved by the General Assembly of the United Nations by Resolution No. 31/98 on December 15, 1976, a revised version of which was adopted by the United Nations Commission on International Trade Law on June 25, 2010 (UNCITRAL Arbitration Rules) are a comprehensive, internationally accepted set of arbitration rules which parties may adopt for the resolution of disputes arising under their contract. The UNCITRAL Arbitration Rules, however, essentially provide for a non-institutional form of arbitration. Yet in practice, UNCITRAL encourages arbitral institutions and other interested bodies to offer administrative services and to act as appointing authority in order to facilitate arbitral proceedings conducted under the UNCITRAL Arbitration Rules.<sup>1</sup>

With the following UNCITRAL-Arbitration Rules administered by the DIS, the DIS provides a set of rules which allows the parties to benefit fully from the advantages of institutional arbitration whilst applying the UNCITRAL Arbitration Rules. Amendments to the UNCITRAL Arbitration Rules were only made to allow for the administration of the arbitral proceedings by the DIS. As a result, parties and legal counsel who have gained familiarity with and confidence in the UNCITRAL Arbitration Rules may rely on the uniform and full application of those rules and at the same time enjoy the benefits of arbitral proceedings under the auspices of an experienced arbitral institution.

Cologne, May 1, 2012

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<sup>1</sup> Cf. "Recommendations to assist arbitral institutions and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules", Report of the United Nations Commission on International Trade Law on the work of its fifteenth session (New York, 26 July – 6 August 1982), Official Records of the General Assembly, thirty-seventh session, Supplement No. 1 (A/37/17) (19 August 1982).

## ARBITRATION CLAUSE

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

**“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules administered by the DIS (German Institution of Arbitration).”**

*Parties should consider adding:*

- (a) The number of arbitrators shall be ... [one or three];
- (b) The place of arbitration shall be ... [town and country];
- (c) The language to be used in the arbitral proceedings shall be ...

## **SECTION I. INTRODUCTORY RULES**

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### **Scope of application<sup>2</sup>**

#### **Article 1**

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules administered by the DIS (“the Rules”) then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.
2. Unless otherwise agreed by the parties, the Rules in effect on the date of the commencement of the arbitral proceedings apply to the dispute.
3. These Rules shall govern the arbitration except that where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

### **Notice, calculation of periods of time and required copies of written pleadings and attachments**

#### **Article 2**

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.
3. In the absence of such designation or authorization, a notice is: (a) Received if it is physically delivered to the addressee; or (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the

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<sup>2</sup> A model arbitration clause for contracts may be found in the Introduction to the Rules.

addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
7. In case notices are to be filed with the DIS Secretariat, such notices and attachments shall be submitted in a number of copies at least sufficient to provide one copy for each arbitrator, for each party and for the DIS Secretariat.

## **Notice of arbitration**

### **Article 3**

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the DIS Secretariat a notice of arbitration.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the DIS Secretariat.
3. The notice of arbitration shall include the following:
  - (a) A demand that the dispute be referred to arbitration;
  - (b) The names and contact details of the parties;
  - (c) Identification of the arbitration agreement that is invoked;
  - (d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or

instrument, a brief description of the relevant relationship;

- (e) A brief description of the claim and an indication of the amount involved, if any;
  - (f) The relief or remedy sought;
  - (g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.
4. The notice of arbitration may also include:
- (a) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
  - (b) Notification of the appointment of an arbitrator referred to in articles 9 or 10.
5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.
6. Upon communicating the notice of arbitration, the claimant shall pay to the DIS the administrative fee as well as a provisional advance on the arbitrators' costs in accordance with article 41 paragraph 4 and Annex III in force on the date of receipt of the notice of arbitration by the DIS Secretariat. 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.
7. The DIS Secretariat communicates the notice of arbitration to the other party or parties (hereinafter called the "respondent") without undue delay. The DIS Secretariat may make delivery of the notice of arbitration contingent on having received the number of copies of the notice of arbitration and attachments required pursuant to article 2 paragraph 7 as well as payment required pursuant to paragraph 6 of this article.

## **Response to the notice of arbitration**

### **Article 4**

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the DIS

Secretariat a response to the notice of arbitration, which shall include:

- (a) The name and contact details of each respondent;
  - (b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g).
2. The response to the notice of arbitration may also include:
  - (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
  - (b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
  - (c) Notification of the appointment of an arbitrator referred to in article 9 or 10;
  - (d) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
  - (e) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.
3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.
4. The DIS Secretariat communicates the response to the notice of arbitration to the claimant without undue delay.
5. In case respondent files a counterclaim, the respondent shall pay to the DIS the administrative fee in accordance with article 41 paragraph 4 and Annex III in force on the date of commencement of the proceedings. 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.
6. The DIS Secretariat communicates 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 num-

ber of copies of the counterclaim and attachments required pursuant to article 2 paragraph 7 as well as payment required pursuant to paragraph 5 of this article.

## **Representation and assistance**

### **Article 5**

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to the DIS Secretariat, all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the DIS Secretariat and the arbitral tribunal, on their own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the DIS Secretariat or the arbitral tribunal may determine.

## **Designating and appointing authorities**

### **Article 6**

1. The provisions regarding the tasks of the designating authority under the UNCITRAL Arbitration Rules are not applicable to proceedings under these Rules.
2. The tasks assigned to the appointing authority under the UNCITRAL Arbitration Rules are assumed by the DIS Appointing Committee.

## **SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL**

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### **Number of arbitrators**

#### **Article 7**

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.
2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time-limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the DIS Appointing Committee may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

### **Appointment of arbitrators (Articles 8 to 10)**

#### **Article 8**

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the DIS Appointing Committee.
2. The DIS Appointing Committee shall appoint the sole arbitrator as promptly as possible.

#### **Article 9**

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator and shall inform the DIS Secretariat accordingly. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal and shall inform the DIS Secretariat accordingly.
2. If within 30 days after the receipt of the DIS Secretariat's notice of a party's notification of the appointment of an arbitrator the other party has not notified the DIS Secretariat of the arbitrator it has appointed, the first

party may request the DIS Appointing Committee to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the presiding arbitrator, the presiding arbitrator shall be appointed by the DIS Appointing Committee in the same way as a sole arbitrator would be appointed under article 8.

## **Article 10**

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
3. In the event of any failure to constitute the arbitral tribunal under these Rules, the DIS Appointing Committee shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

## **Disclosures by and challenge of arbitrators<sup>3</sup> (Articles 11 to 13)**

### **Article 11**

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose by notice to the DIS Secretariat any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the DIS Secretariat unless it has already been informed by him or her of these circumstances. The DIS Secretariat informs the parties accordingly and grants the parties an opportunity to comment within an appropriate time-limit.

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<sup>3</sup> Model statements of independence pursuant to article 11 can be found in Annex II. to the Rules.

## **Article 12**

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

## **Article 13**

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 become known to that party.
2. The notice of challenge shall be communicated to the DIS Secretariat. The notice of challenge shall state the reasons for the challenge. The DIS Secretariat grants all other parties and the arbitrator who is challenged an opportunity to comment within an appropriate time-limit.
3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the DIS Appointing Committee.

## **Replacement of an arbitrator**

### **Article 14**

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.
2. If, at the request of a party, the DIS Appointing Committee determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the DIS Appointing Committee may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

## **Repetition of hearings in the event of the replacement of an arbitrator**

### **Article 15**

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

## **Exclusion of liability**

### **Article 16**

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the DIS Secretariat, its officers and employees, the DIS Appointing Committee and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

## SECTION III. ARBITRAL PROCEEDINGS

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### General provisions

#### Article 17

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party, provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

## **Place of arbitration**

### **Article 18**

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

## **Language**

### **Article 19**

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

## **Statement of claim**

### **Article 20**

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

2. The statement of claim shall include the following particulars:
  - (a) The names and contact details of the parties;
  - (b) A statement of the facts supporting the claim;
  - (c) The points at issue;
  - (d) The relief or remedy sought;
  - (e) The legal grounds or arguments supporting the claim.
3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.
4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

## **Statement of defence**

### **Article 21**

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.
2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (art. 20, para. 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.
3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 (f), and a claim relied on for the purpose of a set-off.

## **Amendments to the claim or defence**

### **Article 22**

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

## **Pleas as to the jurisdiction of the arbitral tribunal**

### **Article 23**

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.
2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

## **Further written statements**

### **Article 24**

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## **Periods of time**

### **Article 25**

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.

## **Interim measures**

### **Article 26**

1. The arbitral tribunal may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
  - (a) Maintain or restore the status quo pending determination of the dispute;
  - (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
  - (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - (d) Preserve evidence that may be relevant and material to the resolution of the dispute.
3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:
  - (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against

whom the measure is directed if the measure is granted; and

- (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

## **Evidence**

### **Article 27**

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless

otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

## **Hearings**

### **Article 28**

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

## **Experts appointed by the arbitral tribunal**

### **Article 29**

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence.

Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

## **Default**

### **Article 30**

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
  - (a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
  - (b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such fail-

ure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

## **Closure of hearings**

### **Article 31**

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

## **Waiver of right to object**

### **Article 32**

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

## **SECTION IV. THE AWARD**

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### **Decisions**

#### **Article 33**

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

### **Form and effect of the award**

#### **Article 34**

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
6. A sufficient number of copies of the award signed by the arbitrators shall be communicated to the DIS Secretariat by the arbitral tribunal.
7. The DIS Secretariat communicates one copy of the award to each party. Communication 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.

## **Applicable law, amiable compositeur**

### **Article 35**

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

## **Settlement or other grounds for termination**

### **Article 36**

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the DIS-Secretariat. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2 and 4 to 8 shall apply.
4. Before the arbitral tribunal is constituted, the DIS Secretariat, after consulting the parties, may issue an order for the termination of the arbitral proceedings if:

- (a) the claimant withdraws its claim, unless the respondent objects thereto and the DIS Secretariat recognizes a legitimate interest on its part in obtaining a final settlement of the dispute; or
- (b) the parties agree on the termination of the arbitral proceedings; or
- (c) the parties fail to pursue the arbitral proceedings in spite of being so requested by the DIS Secretariat or when the continuation of the proceedings has for any other reason become impossible.

## **Interpretation of the award**

### **Article 37**

1. Within 30 days after the receipt of the award, a party, with notice to the other parties and the DIS Secretariat, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 8 shall apply.

## **Correction of the award**

### **Article 38**

1. Within 30 days after the receipt of the award, a party, with notice to the DIS Secretariat and the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 8 shall apply.

## **Additional award**

### **Article 39**

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the DIS Secretariat and the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 8, shall apply.

## **Definition of costs**

### **Article 40**

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term “costs” includes only:
  - (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;
  - (b) The reasonable travel and other expenses incurred by the arbitrators;
  - (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
  - (d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
  - (e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
  - (f) The DIS administration fee;
  - (g) Any value-added tax levied upon the costs itemized (a)-(f).
3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribu-

nal may charge the costs referred to in paragraphs 2 (b) to (g), but no additional fees.

## **Fees and expenses of arbitrators and DIS administrative fee**

### **Article 41**

1. The arbitrators are entitled to fees and expenses pursuant to article 40, paragraph 2 (a) and (b) and the DIS is entitled to an administrative fee pursuant to article 40, paragraph 2 (f) both of which are fixed by reference to the amount in dispute. The amount in dispute is to be assessed by the arbitral tribunal at its due discretion. The amount of fees shall be calculated in accordance with Annex III which forms part of these Rules.
2. If proceedings are terminated prematurely, the arbitral tribunal may at its equitable discretion reduce the fees in accordance with the progress of the proceedings.
3. 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.
4. The parties are jointly and severally liable to the arbitral tribunal for payment of the costs of the arbitral proceedings, notwithstanding any claim for reimbursement by one party against the other.

## **Allocation of costs**

### **Article 42**

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

## **Deposit of costs**

### **Article 43**

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraph 2 (a) to (c).
2. The provisional advance paid by the claimant to the DIS pursuant to article 3 paragraph 6 shall be credited to the claimant's share of the advance on costs.
3. During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.
4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

### **APPOINTING COMMITTEE OF THE DIS (DIS-ERNENNUNGS-AUSCHUSS)**

#### **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.

### **Model statements of independence pursuant to article 11 of the Rules**

**No circumstances to disclose:** I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

**Circumstances to disclose:** I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 11 of the UNCITRAL Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

*Note: Any party may consider requesting from the arbitrator the following addition to the statement of independence:*

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time-limits in the Rules.

## ANNEX III

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### To article 41 paragraph 1 of the Rules (in force as from April 1, 2014)

- 1) Amount in dispute up to 5,000.00 €:

The fee for the chairman of the arbitral tribunal or for a sole arbitrator amounts 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	Fee for chairman of arbitral tribunal/ sole arbitrator	Fee for each co-arbitrator
up to	6,000.00 €	1,560.00 €	1,200.00 €
up to	7,000.00 €	1,755.00 €	1,350.00 €
up to	8,000.00 €	1,950.00 €	1,500.00 €
up to	9,000.00 €	2,145.00 €	1,650.00 €
up to	10,000.00 €	2,340.00 €	1,800.00 €
up to	12,500.00 €	2,535.00 €	1,950.00 €
up to	15,000.00 €	2,730.00 €	2,100.00 €
up to	17,500.00 €	2,925.00 €	2,250.00 €
up to	20,000.00 €	3,120.00 €	2,400.00 €
up to	22,500.00 €	3,315.00 €	2,550.00 €
up to	25,000.00 €	3,510.00 €	2,700.00 €
up to	30,000.00 €	3,705.00 €	2,850.00 €
up to	35,000.00 €	3,900.00 €	3,000.00 €
up to	40,000.00 €	4,095.00 €	3,150.00 €
up to	45,000.00 €	4,290.00 €	3,300.00 €
up to	50,000.00 €	4,485.00 €	3,450.00 €

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 € up to an amount of 650,000,000.00 €; any amount exceeding the additional 650,000,000.00 € shall not affect the calculation of the fee;
- 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' fees 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 Nos. 3) – 14);
- 16) Reimbursement of expenses pursuant to Section 40 subsection 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 subsection 1 corresponds to the fees for a co-arbitrator pursuant to this schedule;
- 18) a) 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 the case of an amount in dispute of 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 DIS 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 30,000.00 €;
- b) 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 fee assessed according to the increased overall amount in dispute;
- c) The minimum administrative fee for a counterclaim is 350.00 €, the maximum fee for claim and counterclaim is 45,000.00 €;
- d) If more than two parties are involved in the arbitral proceedings, the DIS administrative fee set forth in Nos. 18 a) – c) is increased by 20% for each additional party. The additional fee shall not exceed 15,000.00 €. The sum of the administrative fee calculated pursuant to Nos. 18 a) – c) and the additional fee pursuant to this No. 18 d) shall be the DIS administrative fee;
- e) Where the arbitral proceedings are terminated prior to the constitution of the arbitral tribunal, the DIS may, at its own discretion, decrease the DIS administrative fee calculated pursuant to Nos. 18 a) – d) by a maximum of 50% of such fee.
- 19) If a statement of claim, a counterclaim or any other written pleading 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 No. 18).



## NOTES

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# NOTES

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# DIS

Deutsche Institution für Schiedsgerichtsbarkeit e.V.  
German Arbitration Institute  
[www.disarb.org](http://www.disarb.org)  
[dis@disarb.org](mailto:dis@disarb.org)