

## DIS GUIDE FOR ARBITRATORS

This Guide is intended as practical support for arbitrators in conducting proceedings under the DIS Arbitration Rules. These compiled notes are based on the DIS's experience from recent years as well as on suggestions and feedback from the Practice Groups. It therefore provides not only orientation for arbitrators but also serves as a source of information for parties. The Guide is designed as a basic framework that underlies the DIS letters and complements them in substance.

### I. Efficient Conduct of Proceedings and Case Management Conference(s)

Pursuant to Article 27.1 DIS Arbitration Rules, the arbitral tribunal and the parties shall conduct the proceedings in a time- and cost-efficient manner, taking into account the complexity and economic importance of the dispute.

The arbitral tribunal shall hold a case management conference as soon as possible after its constitution, in principle within 21 days. The arbitral tribunal may hold additional case management conferences pursuant to Article 27.6 DIS Arbitration Rules as needed.

These case management conferences are intended to initiate a discussion regarding the efficient conduct of the proceedings which may impact on the duration and cost of the arbitration. For this reason, Article 27.3 DIS Arbitration Rules encourages parties to attend the case management conference in person or with an in-house representative, together with any outside counsel. The DIS recommends that the arbitral tribunal and any outside counsel encourage the parties or in-house representatives to attend the case management conference and to point out its possible effects on the duration and cost of the arbitration.

Pursuant to Article 27.4 DIS Arbitration Rules, during the case management conference, the arbitral tribunal shall discuss the following with the parties:

- each of the Measures for Increasing Procedural Efficiency set forth in Annex 3 [lit. (i)];
- whether the provisions of Annex 4 (Expedited Proceedings) should be applied [lit. (ii)];
- the possibility of using mediation or any other method of amicable dispute resolution to seek the amicable settlement of the dispute [lit. (iii)], and;
- whether to employ experts and, if so, how to conduct the expert procedure efficiently (Article 27.7).

Where the Rules are silent as to the procedure to be applied and in the absence of any agreement of the parties, the arbitral tribunal in its discretion shall decide upon the procedure, upon consultation of the parties, in accordance with Article 21.3 DIS Arbitration Rules. This includes any decision on the items listed above.

### II. Ongoing Duty of Disclosure

Please note that every arbitrator shall have a continuing obligation throughout the entire arbitration to promptly disclose in writing to the parties, the other arbitrators and the DIS any facts or circumstances in the sense of Article 9.4 DIS Arbitration Rules. Such continuing obligation extends to the parties as well as to any companies/individuals named for the initial conflict check prior to appointment.

### **III. Determination of the Amount in Dispute pursuant to Article 36.2 DIS Arbitration Rules**

The arbitral tribunal shall, after consultation with the parties, determine the amount in dispute pursuant to Article 36.2 DIS Arbitration Rules.

We suggest that pursuant to Article 27 DIS Arbitration Rules, the arbitral tribunal determine the amount in dispute at least preliminarily during the case management conference or as soon as possible thereafter. Please note that should the amount in dispute be determined upon termination of the arbitration, the time limit in Article 36.3 DIS Arbitration Rules applies, which may lead to a delay in transmission of the arbitral award.

### **IV. Procedural Orders and Procedural Timetable**

During or as soon as possible after the case management conference, pursuant to Article 27.5 DIS Arbitration Rules, the arbitral tribunal shall issue a procedural order and a procedural timetable.

**Please note that pursuant to Article 27.8 DIS Arbitration Rules, the arbitral tribunal shall also transmit a copy of each procedural order and procedural timetable, as well as any amendments thereto, to the DIS.**

### **V. Closing of Proceedings pursuant to Article 31 DIS Arbitration Rules**

Please note that pursuant to Article 31 DIS Arbitration Rules, after the last hearing or the last admitted Submission, whichever is later, the arbitral tribunal shall close the proceedings by issuing a procedural order that shall also be sent to the DIS.

### **VI. Arbitral Award**

Pursuant to Article 39.3 DIS Arbitration Rules, the arbitral tribunal shall send a draft of the award in electronic form to the DIS for review, in principle within three months after the last hearing or the last admitted Submission, whichever is later.

Please note the requirements for content, form and transmission of the arbitral award as stipulated in Article 39 DIS Arbitration Rules.

The DIS may make observations with regard to form and may suggest other non-mandatory modifications to the arbitral tribunal. The arbitral tribunal shall remain exclusively responsible for the content of the award.

Please note that pursuant to Article 41.3 DIS Arbitration Rules, Article 39 applies *mutatis mutandis* to awards by consent.

**Please submit the paper form of the Award in an unbound format, providing sufficient number of copies so that one copy may be transmitted to each party, plus one additional copy that remains with the DIS.**

## VII. Arbitrators' Fees and Expenses

Pursuant to Article 34.3 DIS Arbitration Rules, the DIS shall pay the fees and expenses of the arbitrators after the termination of the arbitration. The arbitrators shall issue corresponding invoices for the parties.

Pursuant to Paragraph 6.2 Annex 2 DIS Arbitration Rules, to facilitate the process of reimbursement the DIS shall reimburse any taxes or charges upon presentation of a corresponding invoice by an arbitrator out of the supplement.

### 1. Arbitrators' Fees

Pursuant to Article 34.2 DIS Arbitration Rules, the arbitrators' fees shall be calculated pursuant to the Schedule of Costs (Annex 2 of the DIS Arbitration Rules) that is in effect on the date of the commencement of the arbitration, provided that the arbitration is terminated with the making of a final award.

In cases where the arbitration is **terminated prior to the making of a final award**, pursuant to Article 34.4 DIS Arbitration Rules, the Arbitration Council shall fix the arbitrators' fees. According to this provision, the Arbitration Council may also decrease the fees as stipulated in Paragraph 2 Annex 2 of the DIS Arbitration Rules. Pursuant to Article 34.4 DIS Arbitration Rules, the Arbitration Council shall take into consideration, *inter alia*, the stage of the proceedings at the time of the termination and the diligence and efficiency of the arbitrators, having regard to the complexity and economic importance of the dispute.

The Arbitration Council also routinely takes into account the number of hours that the arbitrators have spent on the proceedings, which is information they will be invited to provide during the consultation pursuant to Article 34.4. Please note that this information only serves the Council as a control consideration. Providing this information is voluntary and generally tends to work to the arbitrators' advantage rather than their disadvantage. **We hence ask the arbitrators to track the hours they spend in connection with the arbitration from the outset.**

Pursuant to Paragraph 6.1 Annex 2 DIS Arbitration Rules, the fees are not inclusive of value added tax.

### 2. Reimbursement of Expenses

Pursuant to Articles 34.1, 34.2 DIS Arbitration Rules and Paragraph 5 Annex 2 DIS Arbitration Rules, the version of the respective guidelines of the DIS in force on the date of the commencement of the arbitration shall apply to the reimbursement of expenses. These guidelines are available [here](#).

At an appropriate stage of the arbitration, the DIS will send a form for reimbursement of expenses to the arbitrators. Please note that we require electronic copies of all receipts for reimbursement.

### 3. Invoices for the Parties

Pursuant to Article 34.3 DIS Arbitration Rules, the DIS shall pay the fees and expenses of the arbitrators after the termination of the arbitration out of the Deposit. However, since the parties are the beneficiaries of the services of the arbitral tribunal the arbitrators' invoices for the fees and expenses shall be made out to the parties.

#### 4. Reimbursement upon Termination of the Arbitration

Upon termination of the arbitration, pursuant to Paragraph 6.2 Annex 2 DIS Arbitration Rules the DIS shall also reimburse the parties for their share of the supplement that was requested to facilitate the process of reimbursement of any value added tax on the arbitrators' fees.

Pursuant to Paragraph 6.2 Annex 2 DIS Arbitration Rules, to facilitate the process of reimbursement of any value added tax on the arbitrators' fees upon termination of the arbitration, the DIS shall also reimburse parties for their share of the supplement.

To make such reimbursement without any undue delay after termination of the arbitration, we would be grateful if the arbitrators could provide us with the following information already at the time of constitution of the arbitral tribunal:

- the rate of any value added tax that will apply to the invoices of any arbitrator's fees and expenses to the individual parties;
- the bank details to be used for payment of the arbitrators' fees and expenses. Please note that unless we are instructed otherwise, the DIS will also use these bank details for all payments in connection with this arbitration.

Upon receiving a payment, please verify whether you are obliged to report said payment to the Deutsche Bundesbank pursuant to Section 67 of the Foreign Trade and Payments Ordinance (AWV).

#### VIII. Information on Administrative Fees of the DIS

Pursuant to Article 32 (iv) DIS Arbitration Rules, the administrative fees of the DIS are part of the costs of the arbitration. The administrative fees of the DIS pursuant to Paragraph 3 Annex 2 DIS Arbitration Rules are calculated separately for the Request, the counterclaim or the Request against an Additional Party. **Unlike the Deposit, in these cases the administrative fees are not paid by the parties in equal shares.**

Please take these payments into account for your decision concerning the allocation of costs pursuant to Article 33.2 DIS Arbitration Rules. An overview of the payments made by the parties is provided when the arbitral tribunal is constituted. Pursuant to Article 39.2 DIS Arbitration Rules, the DIS shall communicate the amount of the costs to the arbitral tribunal once again towards the end of the arbitration.

#### IX. Information on the Deposit pursuant to Article 35 DIS Arbitration Rules

The parties shall provide a security for the fees and expenses of the arbitrators ('Deposit'). Pursuant to the Schedule of Costs (Annex 2), the DIS shall fix the amount of the Deposit that shall be calculated on the basis of the amount in dispute. The Deposit is calculated to ensure that the arbitrators' actual fees and expenses are fully covered and shall be paid by Claimant and Respondent in equal shares.

The actual arbitrators' fees and expenses are part of the costs of the arbitration pursuant to Article 32 (i) DIS Arbitration Rules and shall be communicated to the arbitral tribunal pursuant to Article 39.2 DIS Arbitration Rules.

**Hence, the amounts the parties pay as their share of the Deposit are not to be taken into account in the arbitral tribunal's decision on costs.**

**Please note the following regarding Articles 39.2, 32 (i) DIS Arbitration Rules:**

In addition to the Deposit, the DIS requests a supplement of up to 20% of the arbitrators' fees pursuant to Paragraph 6.2 Annex 2 of the DIS Arbitration Rules. This facilitates the reimbursement of any value added tax from the parties to the arbitrators.

**This supplement is not part of the Deposit** and the value added tax is not part of the costs of the arbitration pursuant to Article 32 (i) DIS Arbitration Rules.

Please take this into account for your decision concerning the costs of the arbitration pursuant to Article 33 DIS Arbitration Rules.

Please do not hesitate to contact the DIS if we can be of any assistance to you in the course of this arbitration.

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