

PRESS RELEASE

Third-party notices in arbitration: DIS offers Supplementary Rules for Third-Party Notices (DIS-TPNR)

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Since 15 March 2024, the German Arbitration Institute (DIS) offers supplementary rules that allow for the filing of third-party notices in an arbitration. These **Supplementary Rules for Third-Party Notices (DIS-TPNR)** are available at www.disarb.org/en/tools-for-dis-proceedings/dis-rules. They are available in German and English.

With these rules, the DIS closes a gap. Until now, parties to an arbitration were not able to file third-party notices, as allowed by the German Code of Civil Procedure for proceedings before the German state courts. This applied equally to DIS arbitrations and to proceedings under the rules of other leading arbitral institutions. The DIS is the first arbitral institution to offer supplementary rules to bridge this gap. Model clauses for agreeing upon the DIS-TPNR can be found at www.disarb.org/en/tools-for-dis-proceedings/dis-model-clauses.

The need for such rules is great. The third-party notice plays an important role in disputes where, depending on the outcome of the arbitration, a party may either have recourse claims against a third party or anticipate such claims of a third party. In such constellations, a third-party notice prevents the same factual and legal issues from being litigated again – and assessed differently – in any subsequent dispute between the party filing the third-party notice and the third party. In practice, the third-party notice may be of particular interest in supply chains and main/subcontractor contractual relationships. The subsequent dispute does not necessarily have to be a DIS arbitration; the DIS-TPNR also allow for a third-party notice for subsequent disputes that are conducted before other arbitral tribunals or state courts.

The DIS-TPNR largely replicate the civil procedure model of third-party notice. The third party has the right to join the arbitration as an intervener. A special feature of DIS-TPNR is that the third party has the right to influence the composition of the arbitral tribunal during the proceedings. At the same time, the intervention in the course of the arbitration is minimally invasive because the role of the third-party notice recipient is limited to that of an intervener. The intervener does not become a party to the arbitration and therefore, in particular, cannot bring its own claims against the parties to the arbitration, in contrast to a third party who is included in the legal dispute in accordance with the existing provisions of the DIS Arbitration Rules. This minimally invasive approach facilitates the conduct of the arbitration.

The DIS-TPNR were developed by a DIS working group with the participation of numerous practitioners. The DIS has published a practice note with further information, which is also available at www.disarb.org/en/tools/practice-notes. Questions about the DIS-TPNR can be directed to the DIS office.

German Arbitration Institute (DIS)

The DIS is the leading institution of arbitration and alternative dispute resolution for domestic and international commercial disputes in Germany with over 100 years of experience.

Contact for media enquiries:

Thomas Losem
Coordinator Corporate Affairs & Project Management:

Phone: +49 228 39 18 15 211

Email: thomas.losem@disarb.org

German Arbitration Institute (DIS)

Deutsche Institution für Schiedsgerichtsbarkeit e. V.
Bonn Office
Marienforster Str. 52
53177 Bonn

Phone: +49 228 391 815 200

Fax: +49 228 391 815 222

Email: welcome@disarb.org

Web: www.disarb.org