

## GENERAL INFORMATION ON DIS ARBITRATION PROCEEDINGS

The following information is intended to assist you in filing a Request for Arbitration with the DIS and to guide you through a DIS Arbitration. For further information and details on the arbitration process as well as a comprehensive overview of the complete DIS portfolio, please refer to the DIS Website.

### I. Number of copies of the Request for Arbitration and electronic communication

When filing a Request for Arbitration, please note the mandatory requirements and the number of copies.

#### 1. Request of Arbitration

The Request for Arbitration can be sent by email to

[casemanagement@disarb.org](mailto:casemanagement@disarb.org)

Larger files can be submitted to the DIS using FTAPI-SubmitBox. An upload link will be provided upon request by email to the address above.

In accordance with Article 4.2 DIS Arbitration Rules, one paper copy of the Request for Arbitration as well as any attachments thereto must be provided for each Respondent to ensure proper transmission.

The attachments may be submitted in electronic form on a portable storage device, instead of in paper form. In such case, one portable storage device per Respondent must be included for transmission.

Notwithstanding Article 4.2 (ii) DIS Arbitration Rules, a paper copy without attachments of the Request for Arbitration for the DIS is no longer required.

Pursuant to Article 6.1 DIS Arbitration Rules, the arbitration will commence on the date of receipt of the Request for Arbitration.

#### 2. Extension of the claim / Counterclaim

Any counterclaim or extension of the claim shall be submitted electronically, as the DIS assumes that the other party will recognize the electronic transmission as proper transmission.

Therefore, a submission in paper form is only necessary in case the other party requests a transmission in paper form and the DIS set a time limit to submit a copy in paper.

#### 3. Electronic communication

Please note that, pursuant to Article 4.1 DIS Arbitration Rules, the DIS communicates with the parties almost exclusively in electronic form except for the Request for Arbitration and Counterclaim. Against this background, please be informed that any submission that is not required by the DIS Arbitration Rules to be transmitted in paper form will be duly destroyed.

#### 4. DIS eFile

Since 2023, the digital case management system, DIS eFile, has been in use. It enables the efficient and user-friendly electronic management of all arbitration documents. The system is based on cloud-based project management and collaboration software provided by Thomson Reuters, a leading global provider of digital legal applications. To use DIS eFile, the consent of all parties is required. At the beginning of the arbitration, the DIS will ask both the Claimant and Respondent to confirm whether they agree to use DIS eFile.

## II. Mandatory information in the Request for Arbitration and the Notification by the Respondents

Pursuant to Articles 5.2 and 7.1 DIS Arbitration Rules, both the Request for Arbitration and Respondent's Notification shall contain the following information.

### 1. Amount in Dispute

The amount in dispute is the basis for calculating the arbitrators' fees and the DIS Administrative Fees.

The Request for Arbitration shall contain the amount of any quantified claims and an estimate of the monetary value of any unquantified claims (e.g. declaratory reliefs).

If the amount in dispute is not quantified or not estimated, the DIS shall set a time limit for the parties to do so pursuant to Section 1.2 of Annex 2 to the DIS Arbitration Rules. If the parties do not do so, the DIS may calculate the arbitrator's fees and the Administrative Fees at its discretion. The arbitral tribunal shall determine the amount in dispute pursuant to Article 36.2 DIS Arbitration Rules.

The same shall apply for the counterclaim pursuant to Article 7.5 in conjunction with Article 5.2 (iv) DIS Arbitration Rules.

### 2. Seat of the Arbitration / Language of the Arbitration / Rules of Law Applicable to the Merits of the Dispute

If the seat of arbitration / the language of the arbitration / the rules of law applicable to the merits of the dispute are not specified in the arbitration agreement or if the parties have not otherwise agreed on them, a proposal shall be made in the Request of the Arbitration pursuant to Article 5.2 (viii) DIS Arbitration Rules.

Upon transmitting the Request for Arbitration, the DIS will request Respondent to comment on Claimant's proposal.

With regard to the place of arbitration, please note that pursuant to Article 22.2 DIS Arbitration Rules, the parties may agree that any or all acts in the proceedings may also be conducted at a location other than the seat of the arbitration or via video conference. Similarly, arbitrators are not required to be located at the seat of the arbitration.

Furthermore, the parties may agree on the rules of law applicable to the merits of the dispute. If no such agreement is made, the arbitral tribunal shall apply the rules of law that it deems to be appropriate pursuant to Article 24.2 DIS Arbitration Rules.

### **III. Arbitral Tribunal**

The number of arbitrators shall in principle be determined by the arbitration agreement and may either be one or three.

#### **1. Number of arbitrators not agreed upon**

If the parties have not agreed upon the number of arbitrators in their arbitration agreement, Claimant may propose in its Request for Arbitration that the arbitral tribunal be comprised of one or three persons. Upon transmission of the Request for Arbitration, the DIS will ask the Respondent to provide comments.

If no proposal regarding the number of arbitrators is made, but the Request for Arbitration includes the nomination of an arbitrator, the DIS will assume the tribunal will consist of three arbitrators and will seek confirmation from the Claimant.

If the parties cannot agree on the number of arbitrators, one of the parties may request the DIS Arbitration Council to decide on the number of arbitrators pursuant to Article 10.2 DIS Arbitration Rules. The DIS Council will then determine whether the arbitral tribunal shall consist of one or three arbitrators.

If no request is made, the arbitral tribunal shall consist of three arbitrators pursuant to Article 10.2 DIS Arbitration Rules.

#### **2. Sole Arbitrator**

If the arbitral tribunal consists of a sole arbitrator, he or she shall be appointed jointly by the parties in accordance with Article 11 DIS Arbitration Rules.

However, Claimant may propose a sole arbitrator in the Request for Arbitration. The DIS will ask Respondent for comments. If no proposal is made, the DIS will request the parties to jointly appoint the sole arbitrator within time limit set by the DIS.

If the parties fail to jointly nominate a sole arbitrator, the Appointment Committee of the DIS shall select and appoint the sole arbitrator pursuant to Articles 11 and 13.2 DIS Arbitration Rules.

The parties may agree on a different number of arbitrators than specified in their arbitration agreement. Please note that an arbitral tribunal consisting of three arbitrators incurs higher costs than one with a sole arbitrator, as fees and expenses are incurred for three individuals instead of one.

#### **3. Arbitral Tribunal comprised of three Arbitrators**

If the arbitral tribunal consists of three arbitrators, the request for arbitration must contain the nomination of an arbitrator pursuant to Article 5.2 DIS Arbitration Rules. If the Request for Arbitration does not contain a nomination, the DIS will request Claimant to make such nomination.

If the arbitration agreement provides for three arbitrators, Claimant may still propose in the Request for Arbitration that the arbitral tribunal shall consist of a sole arbitrator. Upon transmission of the Request for Arbitration, the DIS will seek the Respondent's comments on this proposal.

The DIS will generally contact both co-arbitrators simultaneously once they have been nominated. If one of the parties fails to nominate an arbitrator, the Appointment Committee of the DIS shall select and appoint an arbitrator pursuant to Article 12.1 and Article 13.2 DIS Arbitration Rules.

#### **4. Conflict check**

Pursuant to Article 9.4 sentence 1 DIS Arbitration Rules, any person willing to serve as arbitrator must confirm their impartiality and independence. In addition, pursuant to Article 9.4 sentence 2 DIS Arbitration Rules, each prospective arbitrator shall disclose any facts and circumstances which, objectively, may give rise to reasonable doubts of the parties as to their impartiality and independence. Pursuant to Article 9.6 DIS Arbitration Rules, this obligation continues throughout the entire duration of the arbitration.

In addition to the parties themselves, other companies/persons named in the Request for Arbitration may also be relevant for the conflict check of potential arbitrators. The DIS requests that the parties identify any such companies/persons to whom the conflict check should be extended. These may include affiliated companies, but also natural or legal persons who exercise a controlling influence or have a direct economic interest in the arbitral award.

The DIS will ask all nominated arbitrators to extend their conflict check to the companies/persons named by the parties before accepting to act as arbitrator in the arbitration.

#### **5. Objection to the appointment of a person as an arbitrator and Challenge of an arbitrator**

Once a nominated arbitrator has confirmed acceptance of the appointment, the DIS will forward the candidate's statements and disclosures to the parties, setting a time limit—usually one week—for the parties to provide comments, as stipulated in Article 9.5 of the DIS Arbitration Rules. During this period, each party may raise objections to the proposed appointment. The Appointment Committee of the DIS will then make a decision on the appointment in accordance with Article 13.2 of the DIS Arbitration Rules.

After an arbitrator is appointed pursuant to Article 13 of the DIS Arbitration Rules, a party may Challenge the arbitrator under Article 15 of the DIS Arbitration Rules. However, the DIS Arbitration Council will make the final decision regarding the Challenge.

#### **IV. Joinder of Additional Parties**

The joinder of additional parties pursuant to Article 19 DIS Arbitration Rules is only possible prior to the appointment of an arbitrator pursuant to Article 13 DIS Arbitration Rules.

#### **V. Administrative Fees of the DIS**

Pursuant to Article 5.3 DIS Arbitration Rules, Claimant shall make the initial payment of the DIS Administrative Fees. These fees are calculated pursuant to Article 36.1 sentence 1 DIS Arbitration Rules according to the Schedule of Costs (Annex 2 to the DIS Arbitration Rules) on the basis of the specified/provisional amount in dispute. Any value added tax incurred shall be additionally paid pursuant to Section 6.3 Annex 2 to the DIS Arbitration Rules.

Pursuant to Article 36.2 DIS Arbitration Rules the arbitral tribunal shall determine the amount in dispute. This may lead to subsequent increases or decreases in the Administrative Fees.

The bank account specified for the payment of the Administrative Fees is only intended for the payment of such and does not apply to the payment of the Deposit.

The allocation of costs regarding the Administrative Fees shall be decided by the Arbitral Tribunal at the end of the arbitration pursuant to Article 33.2 DIS Arbitration Rules.

## **VI. Deposit for the costs of the arbitrators' fees and expenses**

Pursuant to Article 35.1 DIS Arbitration Rules, the parties shall provide in equal shares security for the arbitrators' fees and expenses ("Deposit"). The Deposit shall be determined by the DIS pursuant to Article 35.3 DIS Arbitration Rules and calculated in accordance with the Schedule of Costs (Annex 2 to the DIS Arbitration Rules) on the basis of the amount in dispute.

Usually, the parties will be requested to pay their shares of the Deposit as soon as an arbitrator is appointed. The DIS opens a separate escrow account for each arbitration to manage the Deposit. The account number of the escrow account is provided to the parties in the payment request.

If one party does not pay its share of the Deposit, the DIS will request the other party to pay the outstanding share of the Deposit pursuant to Article 35.4 DIS Arbitration Rules.

If the Deposit is not provided in full, the DIS may refrain from constituting the arbitral tribunal, Article 13.5 DIS Arbitration Rules or terminate the arbitration proceedings in accordance with Article 35.5 DIS Arbitration Rules. The DIS will pay fees, expenses and any advances on fees in accordance with Article 34.3 DIS Arbitration Rules using the Deposit. The parties shall receive invoices from the respective arbitrators prior to payment.

Any value added tax charged by arbitrators on their fees shall be reimbursed by the parties. In order to facilitate the reimbursement of the value added tax, the DIS levies a Supplement pursuant to Section 6.2 Appendix 2 to the DIS Arbitration Rules of up to 20% of the arbitrators' fees.

To the extent that the total amount of the Deposit paid by the parties exceeds the amount of the costs at the end of the arbitration, the DIS will always refund the excess amount to the parties in proportion to the amounts paid by the parties. Pursuant to Section 4.6 Appendix 2 to the DIS Arbitration Rules, any interest and custody fees, bank charges or any other costs incurred in connection with the escrow account shall be added to or deducted from the Deposit.

## **VII. Constitution of the Arbitral Tribunal**

Once all arbitrators have been appointed, the arbitral tribunal is constituted in accordance with Article 13.4 DIS Arbitration Rules. Henceforth the arbitral tribunal conducts the arbitration in accordance with Article 14.1 DIS Arbitration Rules.

## **VIII. Privacy Policy**

The Privacy Policy by the DIS is available online at: <https://www.disarb.org/ueber-uns/datenschutz>.

The policy describes the reason for and nature of the processing of personal data in the role as an Arbitration Institute.

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