

DIS

DIS Conciliation Rules

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(in force as from January 1, 2002)

(Schedule of Costs in force as from
October 1, 2004)

DIS

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Deutsche Institution für Schiedsgerichtsbarkeit

PREFACE*

The Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) (German Institution of Arbitration), which was formed on January 1, 1992 by the merger of the Deutsche Ausschuss für Schiedsgerichtsbarkeit (German Association of Arbitration) and the Deutsches Institut für Schiedsgerichtsbarkeit (German Institute of Arbitration), promotes arbitration and provides a uniform service for all arbitration-related matters across Germany.

The DIS Arbitration Rules, effective since July 1, 1998, are available to businesses of all sectors, for the resolution of disputes on a domestic as well as on an international level. Although many of the proceedings conducted pursuant to these Rules result in a settlement in the form of an arbitral award on agreed terms, the parties often have an interest in pursuing an amicable resolution of the dispute by means of separate proceedings conducted before an independent and impartial third party, who is not authorised to decide the dispute finally. “Mediation” and “Conciliation” are the terms used most often to denote such proceedings.

The present DIS Conciliation Rules, which become effective on January 1, 2002, comply with the standards and notions at the core of these terms.

Principle and basis of the Conciliation Rules is the notion that the success of conciliation proceedings depends on the willingness of all parties involved to arrive at a solution by consent. Therefore each party has the option to terminate the proceedings at any time without providing reasons.

The willingness of the parties to reach consensus is paramount. This applies in particular to the procedure and commencement of the conciliation proceedings. Thus the present Conciliation Rules consciously provide only the framework for conducting such proceedings.

The DIS Conciliation Rules can be resorted to in domestic as well as international disputes. The place of the proceedings need not be located in Germany. Just like the language(s) of the proceedings, it can be freely negotiated by the parties. Finally, persons of any nationality can be appointed as conciliator.

Berlin/Bonn, January 1, 2002

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

CONCILIATION CLAUSE

The German Institution of Arbitration advises all parties wishing to make reference to DIS conciliation in their contracts to use the following conciliation clause:

“With regard to all disputes arising from or in connection with the contract (... description of the contract ...) conciliation proceedings shall be undertaken in accordance with the Conciliation Rules of the German Institution of Arbitration e.V. (DIS) in effect on the date of commencement of the conciliation proceedings.”

It is recommended that provisions concerning the number of conciliators, the language and the place of conciliation be added to the conciliation clause.

Please note that even if a dispute already has arisen, an agreement to conduct conciliation proceedings in accordance with the DIS-Conciliation Rules can still be concluded at any time.

DIS CONCILIATION RULES

Section 1

Scope of application

- 1.1 The Conciliation Rules set forth herein apply when the parties involved in a dispute seek an amicable settlement and have agreed or agree to do so pursuant to the Conciliation Rules of the German Institution of Arbitration.
- 1.2 There is no required form for the agreement between the parties to apply the DIS Conciliation Rules. The agreement should, however, be in writing.

Section 2

Application for conciliation

- 2.1 The party wishing to commence conciliation proceedings (“the applicant”) shall apply to the other party in writing, requesting the dispute to be settled pursuant to the DIS Conciliation Rules. Particulars of the dispute shall be laid out in the application.
- 2.2 A copy of this application shall be forwarded to the DIS Secretariat. At the same time a registration fee in accordance with item 1 of the schedule of costs shall be paid.

Section 3

Commencement of the conciliation proceedings

- 3.1 Conciliation proceedings commence when the other party advises the DIS Secretariat of its willingness to participate in the proceedings. The acceptance shall be communicated in writing. Fax or e-mail communications shall suffice. The DIS Secretariat informs the parties of the commencement of proceedings without delay.
- 3.2 If the other party turns down the application of the applicant or fails to reply within 30 days or any other time-limit set by the applicant, conciliation proceedings shall not commence.
- 3.3 Conciliation proceedings pursuant to the DIS Conciliation Rules shall likewise not commence, if the registration fee according to section 2 subsection 2 has not been paid to the DIS before expiry of the above mentioned time-limit.

- 3.4 If the DIS does not receive a reply within 30 days of delivery of the application or within any other time-limit mentioned in the application, it shall inform the applicant without delay that the proceedings will not commence.

Section 4

Number of conciliators

The conciliation shall be conducted by a sole conciliator, unless the parties have agreed to the appointment of several conciliators. The parties are free to agree on the number of conciliators.

Section 5

Qualifications required of the conciliator

- 5.1 Each conciliator must be impartial and independent.
- 5.2 Each appointed conciliator shall notify the other party and the DIS Secretariat of all circumstances which are likely to give rise to doubts as to his impartiality or independence.

Section 6

Conciliation proceedings involving more than two parties

- 6.1 If the application for DIS conciliation indicates that more than one other party is involved in the proceedings, the application shall be delivered to each of the parties as well as copy of each to the DIS Secretariat.
- 6.2 If the parties thus indicated do not all agree to the conciliation proceedings, the conciliation proceedings only involve those parties which have expressed their agreement.

Section 7

Appointment and selection of conciliators

- 7.1 In proceedings to be conducted by a sole conciliator, the conciliator is appointed jointly by the parties.
- 7.2 If the parties have agreed on proceedings being conducted by two conciliators, the applicant shall appoint one conciliator and the other party the second. Multiple parties on either or both sides shall appoint their respective conciliator jointly.

- 7.3 If the parties have agreed on proceedings being conducted by three conciliators, the applicant shall appoint one conciliator and the other party the second. Multiple parties on either or both sides shall appoint their respective conciliator jointly. The two conciliators so appointed shall designate the third conciliator.
- 7.4 Upon request, the DIS Secretariat will make suggestions for the selection of conciliators.

Section 8

Appointment of conciliators by the DIS Secretariat

- 8.1 The parties may provide that the DIS Secretariat appoints all or individual conciliators. In such an event, the request for appointment shall be made jointly by all parties in the conciliation proceedings.
- 8.2 If a party fails to appoint a conciliator and if there has been no joint request by the parties for the DIS to appoint a conciliator, the conciliation proceedings shall terminate upon expiry of the time-limit set for the appointment, respectively for the submission of a request. The DIS shall inform the parties without undue delay about the termination of the proceedings.

Section 9

Time-limits for designation of conciliators

Unless otherwise agreed by the parties, the time-limit for appointing conciliators shall be 30 days from commencement of the conciliation proceedings.

Section 10

Request for appointment of a conciliator by the DIS Secretariat

- 10.1 The request for appointment of a conciliator shall contain:
- the names, addresses and, as far as available, telephone and telefax numbers and e-mail addresses of the parties and
 - a copy of the application for conciliation pursuant to section 2 of the DIS Conciliation Rules.
- 10.2 Simultaneously with the request for appointment of a conciliator, the parties shall pay the fee pursuant to item 2 of the schedule of costs.

- 10.3 The fee shall be paid jointly by the parties to the dispute. When requesting payment of the respective shares of the fee due by the parties, the DIS Secretariat shall take account of the registration fee paid by the applicant.
- 10.4 The DIS Secretariat can make the appointment of conciliators contingent on receipt of the fees according to item 2 of the schedule of costs.

Section 11 Proceedings

- 11.1 The conciliators shall support the parties in an impartial and independent manner in their attempt to settle the dispute amicably.
- 11.2 The particulars of the proceedings will be fixed by the conciliators in consultation with the parties.
- 11.3 If the parties so wish, the conciliators can make suggestions towards settling the dispute at every stage of the proceedings. Grounds for the suggestions must not be stated.

Section 12 Termination of the proceedings

- 12.1 Each of the parties involved may terminate the conciliation proceedings at any time without stating grounds. Notice of termination shall be given to the conciliators and to the other party.
- 12.2 Termination of conciliation proceedings does not prevent agreement on commencing new conciliation proceedings.
- 12.3 If the conciliation proceedings do not succeed in resolving the dispute, the proceedings shall be terminated.
- 12.4 The conciliators shall, at the request of a party, provide a written record of the termination. The record shall be signed by all the conciliators.
- 12.5 If the conciliation proceedings end in agreement between the parties, a record of the agreement shall be made which shall be signed by all conciliators and parties involved.
- 12.6 The DIS Secretariat shall be informed of the termination of the proceedings.

Section 13

Confidentiality

- 13.1 The conciliators have an obligation to the parties to respect the unrestricted confidentiality of the conciliation and shall, upon accepting their mandate, declare to the parties their acknowledgement of the duty of confidentiality.
- 13.2 Upon request of a party, the conciliators shall make suggestions for an agreement on the confidential treatment of statements and documents presented, in particular regarding their non-disclosure in proceedings before state courts or arbitral tribunals in the case of failure to reach an amicable settlement.

Section 14

Follow-on arbitration

- 14.1 The parties in conciliation proceedings may, at any stage in the proceedings, agree in writing that the conciliators continue with their mandate in the function of arbitrators. In such case, the duty of confidentiality does not apply vis-à-vis participants in that arbitration (including possible witnesses, consultants etc.).
- 14.2 Unless otherwise agreed by the parties, the arbitration proceedings will be conducted pursuant to the DIS Arbitration Rules.

Section 15

Costs

- 15.1 The costs involved in conducting DIS conciliation proceedings and the fees for conciliators appointed pursuant to the DIS Conciliation Rules are in accordance with the schedule of costs appended to the DIS Conciliation Rules.
- 15.2 The conciliators may modify their fees in agreement with the parties.
- 15.3 The parties shall be jointly and severally liable for the costs of the proceedings.

Section 16

Advance fees

The conciliators may make the commencement or continuation of the proceedings contingent on the payment of an advance equivalent to the total fees of the conciliators and the anticipated reimbursements.

SCHEDULE OF COSTS DIS CONCILIATION RULES

- 1) Registration fee (section 2 subsection 2 DIS Conciliation Rules) 250,- €
- 2) Fee for appointing a conciliator (section 10 DIS Conciliation Rules):
 - for appointing 1 conciliator: 250,- €
 - for appointing 2 conciliators: 375,- €
 - for appointing 3 conciliators: 500,- €
- 3) Fees for conciliators:
 - sole conciliator, member of a conciliation panel of two persons: 200,- to 400,- €/hour
 - member of a conciliation panel of three or more persons: 150,- to 300,- €/hour
- 4) The fees specified in nos. 1 – 3 are subject to the applicable value added tax.

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