

2018

DIS Arbitration Rules

German Arbitration Institute

The 2018 DIS Arbitration Rules come into force on 1 March 2018.
This document serves as information for the Rules Revision Committees,
the DIS Board of Directors, the DIS Advisory Board, the DIS Members,
and any other interested person.

Introductory Provisions

- Article 1** Scope of Application
- Article 2** Role of the DIS
- Article 3** Definitions
- Article 4** Submissions, Time Periods, and Time Limits

Request for Arbitration, Answer, Counterclaims and Consolidation of Proceedings

- Article 5** Request for Arbitration, Transmission to Respondent, Administrative Fee
- Article 6** Commencement of the Arbitration
- Article 7** Respondent's Notification, Answer and Counterclaim
- Article 8** Consolidation of Arbitrations

The Arbitral Tribunal

- Article 9** Impartiality and Independence of the Arbitrators, Duties of Disclosure
- Article 10** Number of Arbitrators
- Article 11** Sole Arbitrator
- Article 12** Three-Member Arbitral Tribunal
- Article 13** Appointment of the Arbitrators
- Article 14** Conduct of the Arbitration by the Arbitral Tribunal
- Article 15** Challenge of an Arbitrator
- Article 16** Termination of an Arbitrator's Mandate

Multi-Contract Arbitration, Multi-Party Arbitration and Joinder

- Article 17** Multi-Contract Arbitration
- Article 18** Multi-Party Arbitration
- Article 19** Joinder of Additional Parties
- Article 20** Three-Member Arbitral Tribunal in Multi-Party Arbitrations

The Proceedings before the Arbitral Tribunal

- Article 21** Rules of Procedure
- Article 22** Seat of the Arbitration
- Article 23** Language of the Arbitration

- Article 24** Rules of Law Applicable to the Merits
- Article 25** Interim Relief
- Article 26** Encouraging Amicable Settlements
- Article 27** Efficient Conduct of the Proceedings
- Article 28** Establishing the Facts, Tribunal-Appointed Expert
- Article 29** Oral Hearing
- Article 30** Default of a Respondent
- Article 31** Closing of Proceedings

Costs

- Article 32** Costs of the Arbitration
- Article 33** Arbitral Tribunal's Costs Decisions
- Article 34** Arbitrators' Fees and Expenses
- Article 35** Deposit for Fees and Expenses of the Arbitral Tribunal
- Article 36** Basis for Calculation of Deposits and Administrative Fees

Termination of the Arbitration by Award or otherwise

- Article 37** Time Limit for the Final Award
- Article 38** Effect of the Arbitral Award
- Article 39** Content, Form and Transmission of the Arbitral Award
- Article 40** Correction of the Arbitral Award
- Article 41** Award by Consent
- Article 42** Termination of the Arbitration before the Making of a Final Award

Miscellaneous

- Article 43** Waiver of Right to Object
- Article 44** Confidentiality
- Article 45** Limitation of Liability

Introductory Provisions

Article 1 Scope of Application

1.1: These rules apply to international and domestic arbitrations in which disputes are to be settled pursuant to the Arbitration Rules of the German Arbitration Institute (DIS) (the “Rules”).

1.2: With respect to any arbitration, the version of the Rules in force on the date of its commencement pursuant to Article 6 shall apply.

1.3: The following Annexes constitute an integral part of the Rules:

- Annex 1 (Internal Rules);
- Annex 2 (Schedule of Costs);
- Annex 3 (Measures for Increasing Procedural Efficiency);
- Annex 4 (Expedited Proceedings);
- Annex 5 (Supplementary Rules for Corporate Disputes);
- Annex 6 (Dispute Management Rules).

1.4: The Rules shall be applied, *mutatis mutandis*, with respect to Annex 4 (Expedited Proceedings) or Annex 5 (Supplementary Rules for Corporate Disputes) when the parties have agreed to apply such Annexes.

Article 2 Role of the DIS

2.1: The DIS administers arbitrations under the Rules and provides support to the parties and the arbitral tribunal for the efficient conduct of the arbitration. It does not resolve disputes itself.

2.2: A party may request the DIS to appoint a Dispute Manager pursuant to Annex 6 (Dispute Management Rules) when one or more of the parties so request and none of the parties object thereto. Dispute Managers advise and assist the parties in selecting the dispute resolution mechanism best suited for resolving their dispute. Any party, or the parties jointly, may request the appointment of a Dispute Manager either prior to the filing of a request for arbitration or at any time during the course of the arbitration.

Article 3 Definitions

3.1: In the Rules, “Claimant”, “Respondent”, “Party”, “Additional Party” and other nouns shall, as required by the context, refer to the singular or the plural.

3.2: “Submissions” as used in the Rules refer to all communications in writing exchanged between or among the parties, the arbitral tribunal and the DIS, including the request for arbitration, the answer, any counterclaims, any additional claims, any request against an additional party, any and all pleadings filed in the course of the arbitration, along with the respective attachments thereto.

3.3: “Address” as used in the Rules refers to both postal and electronic addresses.

3.4: References to persons are gender-neutral.

Article 4 Submissions, Time Periods, and Time Limits

4.1: Subject to Articles 4.2 and 4.3, all Submissions of the parties and the arbitral tribunal to the DIS shall be sent electronically, either by email, on a portable storage device or by any other means of electronic transmission that have been authorized by the DIS. If electronic transmission is not possible, the Submission shall be sent in paper form.

4.2: Requests for arbitration pursuant to Article 5 and Article 19 shall be sent to the DIS in paper form as well as in electronic form. The following number of copies shall be filed:

(i) paper form: one copy of the request for arbitration for each party, as well as any attachments thereto, and one copy for the DIS without attachments; and

(ii) electronic form: one copy of the request for arbitration for each party and for the DIS, as well as any attachments thereto.

The DIS may at any time request further copies of the request for arbitration as well as any attachments thereto.

4.3: A party filing a counterclaim or any additional claims prior to the constitution of the arbitral tribunal shall send to the DIS, for transmission to each party, one paper copy thereof, as well as any attachments thereto, in addition to the electronic copy required by Article 4.1. The DIS may at any time request further copies of such documents as well as any attachments thereto.

4.4: The arbitral tribunal shall determine the form of transmission of Submissions between the parties and the arbitral tribunal.

4.5: Subject to Article 4.2 and Article 25 all Submissions from any party to the arbitral tribunal or to the DIS shall be sent simultaneously to the other party.

4.6: All Submissions shall be sent to the last address provided by the addressee or by the other party. Submissions in paper form shall be sent by delivery against receipt, registered mail, courier, facsimile, or by any other means that provides a record of receipt.

4.7: The date of receipt of any Submission shall be the date of actual receipt by the party itself or by its designated counsel. If a Submission in paper form has been properly transmitted pursuant to Article 4.6 but has not been received by the party itself or by its designated counsel, such Submission shall be deemed to have been received on the date on which it would have been received in the ordinary course of the process of transmission.

4.8: Time periods pursuant to the Rules shall commence on the first business day at the place of receipt after the date of receipt or deemed receipt pursuant to Article 4.7. In case of electronic transmission, time periods shall commence on the first business day after the date of transmission to the electronic address pursuant to Article 4.6. Public holidays and non-business days at the place of receipt that fall within a time period are included in the calculation of the time period. If the last day of a time period is a public holiday or a non-business day at the place of receipt, the time period shall expire at the end of the first subsequent business day.

4.9: The DIS may, in its discretion, extend any time limit referred to in the Rules or fixed by the DIS pursuant to the Rules, except for time limits fixed by the arbitral tribunal.

Request for Arbitration, Answer, Counterclaims And Consolidation Of Proceedings

Article 5 Request for Arbitration, Transmission to Respondent, Administrative Fee

5.1: A party wishing to commence an arbitration under the Rules shall file a Request for Arbitration (the “Request”) with the DIS.

5.2: The Request shall contain:

- (i) the names and addresses of the parties;
- (ii) the names and addresses of any designated counsel representing the Claimant in the arbitration;
- (iii) a statement of the specific relief sought;
- (iv) the amount of any quantified claims and an estimate of the monetary value of any unquantified claims;
- (v) a description of the facts and circumstances on which the claims are based;
- (vi) the arbitration agreement(s) on which the Claimant relies;
- (vii) the nomination of an arbitrator if required under the Rules; and
- (viii) any particulars or proposals regarding the seat of the arbitration: the language of the arbitration and the rules of law applicable to the merits.

5.3: Within a time limit set by the DIS, the Claimant shall pay to the DIS an administrative fee in accordance with the Schedule of Costs (Annex 2) in effect at the time of the commencement of the arbitration. If payment is not made within such time limit, the DIS may terminate the arbitration pursuant to Article 42.5.

5.4: If the Claimant has not filed the Request or the attachments thereto in the number of copies required by Article 4.2 or if the DIS considers that the Request does not sufficiently comply with the requirements of Article 5.2, the DIS may set a time limit for the Claimant to supplement the filing. If the Claimant fails to submit the required number of copies or to supplement the filing with respect to Article 5.2 (ii), (iv), (vii) and (viii) within such time limit, the DIS may terminate the arbitration pursuant to Article 42.6. Article 6.2 shall apply to supplementing the filing with respect to Article 5.2 (i), (iii), (v) and (vi).

5.5: The DIS shall transmit the Request to the Respondent. If the requirements of Article 5.3 or Article 5.4 are not met, the DIS may withhold the transmission.

Article 6 Commencement of the Arbitration

6.1: The arbitration shall commence on the date on which the Request, with or without the attachments thereto, is filed with the DIS in at least one of the forms required by Article 4.2, provided that it includes at least the items listed in Article 5.2 (i), (iii), (v) and (vi).

6.2: If the Claimant fails to supplement the filing with respect to Article 5.2 (i), (iii), (v) and (vi), within the time limit pursuant to Article 5.4, the DIS may take the administrative decision to close the file without prejudice to the Claimant’s right to resubmit its claims in a new proceeding.

Article 7 Respondent's Notification, Answer and Counterclaim

7.1: Within 21 days after receipt of the Request, the Respondent shall notify in writing to the DIS:

- (i) the nomination of an arbitrator, if required under the Rules;
- (ii) any particulars or proposals regarding the seat of the arbitration, the language of the arbitration and the rules of law applicable to the merits; and
- (iii) any request pursuant to Article 7.2 for an extension of the time limit to file an answer to the Request (the "Answer").

7.2: The Respondent shall file its Answer to the Request within 45 days following its receipt of the Request. The DIS, upon a request by the Respondent, shall extend the time limit up to a maximum of 30 additional days.

7.3: If the Respondent maintains that due to exceptional circumstances a total of 75 days is insufficient for filing the Answer, the arbitral tribunal may grant a longer time limit. If the arbitral tribunal is not yet constituted, the DIS shall grant a preliminary extension of the time limit that shall be valid until the arbitral tribunal decides upon the request for an extension.

7.4: The Answer shall contain:

- (i) the names and addresses of the parties;
- (ii) the names and addresses of any designated counsel representing the Respondent in the arbitration;
- (iii) a description of the facts and circumstances on which the Answer is based;
- (iv) a statement of the specific relief sought; and
- (v) any relevant particulars regarding the arbitration agreement, the jurisdiction of the arbitral tribunal and the amount in dispute.

7.5: Any counterclaim shall, when possible, be filed together with the Answer. Article 5.2 shall apply, *mutatis mutandis*. The counterclaim shall be filed with the DIS.

7.6: The Respondent shall pay to the DIS an administrative fee for the counterclaim in accordance with the Schedule of Costs (Annex 2) in effect at the time of the commencement of the arbitration. If payment is not made within a time limit set by the DIS, the DIS may terminate the arbitration with regard to the counterclaim pursuant to Article 42.5.

7.7: If the Respondent has not filed the counterclaim or the attachments thereto in the number of copies required by Article 4.3 or if the DIS considers that the counterclaim does not sufficiently comply with the requirements of Article 7.5, the DIS may set a time limit for the Respondent to supplement the filing. If the Respondent fails to submit the required number of copies or to supplement the filing within such time limit, the DIS may terminate the arbitration with regard to the counterclaim pursuant to Article 42.6.

7.8: The DIS shall transmit the counterclaim to the Claimant and the arbitral tribunal if the Respondent has not already done so. If the requirements of Article 7.6 or Article 7.7 are not met, the DIS may refrain from transmitting the counterclaim.

7.9: The arbitral tribunal shall set a reasonable time limit for the answer to the counterclaim.

Article 8 Consolidation of Arbitrations

8.1: Upon the request of one or more parties, the DIS may consolidate two or more arbitrations conducted under the Rules into a single arbitration if all parties to all of the arbitrations consent to the consolidation. Such consolidation is without prejudice to any decisions of the arbitral tribunal pursuant to Articles 17 to 19.

8.2: Any consolidation of arbitrations shall be into the arbitration that was first commenced, unless the parties have agreed otherwise.

The Arbitral Tribunal

Article 9 Impartiality and Independence of the Arbitrators, Duties of Disclosure

9.1: Every arbitrator shall be impartial and independent of the parties throughout the entire arbitration and shall have all of the qualifications, if any, that have been agreed upon by the parties.

9.2: Subject to Article 9.1, the parties may nominate any person of their choice to act as an arbitrator. The DIS may propose names of potential arbitrators to any party upon such party's request.

9.3: Every prospective arbitrator shall declare in writing whether they accept to act as arbitrator.

9.4: In case of acceptance, the prospective arbitrators shall sign a declaration in which they shall state that they are impartial and independent of the parties, that they have all of the qualifications, if any, that have been agreed upon by the parties, and that they will be available throughout the arbitration. In addition, each prospective arbitrator shall disclose any facts or circumstances that could cause a reasonable person in the position of a party to have doubts as to the arbitrator's impartiality and independence.

9.5: The DIS shall send each prospective arbitrator's declaration and any disclosures pursuant to Articles 9.3 and 9.4 to the parties and shall set a time limit for the parties to provide any comments regarding the appointment of the prospective arbitrator.

9.6: 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.

9.7: Subject to the provisions of this Article 9, Articles 10 to 13 and 20 shall apply to the constitution of the Arbitral Tribunal, unless the parties have agreed otherwise.

Article 10 Number of Arbitrators

10.1: The parties may agree that the arbitral tribunal shall be comprised of a sole arbitrator, of three members or of any other odd number of arbitrators. Article 16.4 shall apply notwithstanding any such agreement.

10.2: If the parties have not agreed upon the number of arbitrators, any party may submit a request to the DIS that the arbitral tribunal be comprised of a sole arbitrator. The Arbitration Council shall decide on such request after consultation with the other party. If no request for the appointment of a sole arbitrator has been made, or if a request has been made but not granted, the arbitral tribunal shall be comprised of three arbitrators.

Article 11 Sole Arbitrator

If the arbitral tribunal is comprised of a sole arbitrator, the parties may jointly nominate the sole arbitrator. If the parties do not agree upon a sole arbitrator within a time limit fixed by the DIS, the Appointing Committee of the DIS (the “Appointing Committee”) shall select and appoint the sole arbitrator pursuant to Article 13.2. In such case, the sole arbitrator shall be of a nationality different from that of any party, unless all parties are of the same nationality or have agreed otherwise.

Article 12 Three-Member Arbitral Tribunal

12.1: If the arbitral tribunal is comprised of three arbitrators, each party shall nominate one co-arbitrator. If a party fails to nominate a co-arbitrator, such co-arbitrator shall be selected by the Appointing Committee and appointed pursuant to Article 13.2.

12.2: The co-arbitrators shall jointly nominate the president of the arbitral tribunal (the “President”) within 21 days after being requested to do so by the DIS. Each co-arbitrator nominated by or appointed on behalf of a party may consult with such party regarding the selection of the President.

12.3: If the co-arbitrators do not nominate the President within the time limit provided in Article 12.2, the Appointing Committee shall select and appoint the President pursuant to Article 13.2. In such case, the President shall be of a nationality different from that of any party, unless all parties are of the same nationality or have agreed otherwise.

Article 13 Appointment of the Arbitrators

13.1: Every arbitrator shall be appointed by the DIS even when such arbitrator has been nominated by a party or by the co-arbitrators.

13.2: The Appointing Committee decides on the appointment of arbitrators, except as provided in Article 13.3.

13.3: The appointment of an arbitrator may also be decided upon by the Secretary General of the DIS if no party has objected to the appointment of the prospective arbitrator within the time limit fixed pursuant to Article 9.5.

13.4: The arbitral tribunal is constituted once all of the arbitrators have been appointed.

13.5: Until all payments requested by the DIS have been made in full, the DIS may postpone the constitution of the tribunal or the appointment of any arbitrator.

Article 14 Conduct of the Arbitration by the Arbitral Tribunal

14.1: Once the arbitral tribunal has been constituted pursuant to Article 13.4, the DIS shall inform the arbitral tribunal and the parties that the arbitration shall henceforth be conducted by the arbitral tribunal.

14.2: In an arbitration having more than one arbitrator, every decision by the arbitral tribunal that is not made unanimously shall be made by majority vote unless the parties agree otherwise. In the absence of a majority vote, the President shall decide alone.

14.3: The President may, in exceptional circumstances, rule on individual procedural issues alone, as long as he has been authorized to do so by the other members of the arbitral tribunal.

Article 15 Challenge of an Arbitrator

15.1: Any party who seeks to challenge an arbitrator, on the grounds that the arbitrator has failed to comply with one or more of the requirements of Article 9.1, shall file a request for challenge ("Challenge") pursuant to Article 15.2.

15.2: The Challenge shall describe the facts and circumstances on which it is based and shall specify when the party filing the Challenge first obtained knowledge of the same. The Challenge shall be filed no later than 14 days after the party filing the Challenge first obtained knowledge of the facts and circumstances on which it is based.

15.3: The DIS shall transmit the Challenge to the challenged arbitrator, the other arbitrators and the other party, and shall set a time limit for comments. The DIS shall send any comments that it receives to the parties and to each arbitrator.

15.4: The Arbitration Council shall decide upon the Challenge.

15.5: The arbitral tribunal may proceed with the arbitration, unless and until the challenge is accepted.

Article 16 Termination of an Arbitrator's Mandate

16.1: An arbitrator's mandate shall terminate on the date on which:

- (i) the Arbitration Council accepts the challenge of such arbitrator;
- (ii) the Arbitration Council accepts the resignation of such arbitrator;
- (iii) the arbitrator dies;
- (iv) the Arbitration Council removes the arbitrator from office pursuant to Article 16.2; or
- (v) all of the parties notify the DIS that they have agreed to terminate such arbitrator's mandate.

16.2: The Arbitration Council may remove an arbitrator from office if it considers that such arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfill those duties in the future. The procedure for removal from office is set forth in the Internal Rules (Annex 1).

16.3: If an arbitrator's mandate is terminated, a replacement arbitrator shall be appointed pursuant to Article 16.5 except as provided in Article 16.4.

16.4: The Arbitration Council may decide that an arbitrator whose mandate has been terminated shall not be replaced if all of the parties and the remaining arbitrators so agree and after taking into account all of the circumstances. If the Arbitration Council so decides, then the arbitration shall continue with the remaining arbitrators only.

16.5: When an arbitrator is to be replaced, the same process that was used for the initial appointment of the replaced arbitrator shall be followed; provided however, that, after consultation with the parties and the remaining arbitrators and having taken into account any circumstances that it considers to be relevant, the Arbitration Council may determine that a different process pursuant to the Rules shall apply.

16.6: The arbitral tribunal, once reconstituted, shall continue the proceedings without repeating any part thereof, unless the parties agree otherwise or the arbitral tribunal considers, after consultation with the parties, that repeating any part of the proceedings is necessary.

Multi-Contract Arbitration, Multi-Party Arbitration and Joinder

Article 17 Multi-Contract Arbitration

17.1: Claims arising out of or in connection with more than one contract may be decided in a single arbitration (“Multi-Contract Arbitration”), provided that all of the parties to the arbitration have agreed thereto. Any dispute as to whether all of the parties have agreed thereto, in particular when there is no express agreement in writing to that effect, shall be decided by the arbitral tribunal.

17.2: When claims are made in reliance on more than one arbitration agreement, they may be decided in a single arbitration, provided that, in addition to the requirement set forth in Article 17.1, such arbitration agreements are compatible. Any dispute as to whether the arbitration agreements are compatible shall be decided by the arbitral tribunal, subject to Article 17.3.

17.3: When Article 17.2 applies and the DIS considers that an incompatibility of the arbitration agreements with respect to their provisions on the constitution of an arbitral tribunal prevents the constitution of an arbitral tribunal under the Rules, Article 42.4 (ii) shall apply.

17.4: When there are multiple parties in a Multi-Contract Arbitration, the provisions of Article 18 (Multi-Party Arbitration) shall apply in addition to the provisions of this Article 17.

Article 18 Multi-Party Arbitration

18.1: Claims made in an arbitration with multiple parties (“Multi-Party Arbitration”) may be decided in that arbitration if there is an arbitration agreement that binds all of the parties to have their claims decided in a single arbitration or if all of the parties have so agreed in a different manner. Any dispute as to whether the parties have agreed thereto, in particular when there is no express agreement in writing to that effect, shall be decided by the arbitral tribunal.

18.2: When claims arising out of or in connection with more than one contract are made in a Multi-Party Arbitration, the provisions of Article 17 (Multi-Contract Arbitration) shall apply in addition to the provisions of this Article 18.

Article 19 Joinder of Additional Parties

19.1: Prior to the appointment of any arbitrator, any party who wishes to join an additional party to the arbitration may file with the DIS a request for arbitration against such additional party (the “Request against an Additional Party”).

19.2: The Request against an Additional Party shall contain:

- (i) the case reference of the pending arbitration;
- (ii) the names and addresses of the parties, including the additional party;
- (iii) a statement of the specific relief sought against the additional party;
- (iv) the amount of any quantified claims and an estimate of the monetary value of any unquantified claims against the additional party;
- (v) a description of the facts and circumstances on which the claims against the additional party are based; and
- (vi) the arbitration agreement(s) on which the party filing the Request against an Additional Party relies.

The remaining provisions of Articles 5 and Article 6 shall apply, *mutatis mutandis*, to the Request against an Additional Party.

19.3: Within a time limit set by the DIS, the additional party shall:

- (i) provide its comments regarding the constitution of the Arbitral Tribunal; and
- (ii) file an Answer in accordance, *mutatis mutandis*, with the requirements of Article 7.4.

19.4: In the Answer, the additional party may make claims against any other party in the arbitration. The requirements of Articles 7.5 to 7.9 shall apply, *mutatis mutandis*, to any such claims.

19.5: The Arbitral Tribunal shall decide any dispute as to whether claims made by or against the additional party may be resolved in the pending arbitration. The Arbitral Tribunal, in making its decision, shall apply the provisions of Article 18 (Multi-Party Arbitration) and, when claims are made under more than one contract, the arbitral tribunal shall also apply the provisions of Article 17 (Multi-Contract Arbitration).

Article 20 Three-Member Arbitral Tribunal in Multi-Party Arbitrations

20.1: In a Multi-Party Arbitration (Article 18), the co-arbitrators shall be appointed as follows:

- (i) the Claimant, or the Claimants jointly, shall nominate one co-arbitrator; and
- (ii) the Respondent, or the Respondents jointly, shall nominate the other co-arbitrator.

20.2: When in a Multi-Party Arbitration a single Claimant or a single Respondent does not nominate a co-arbitrator, such co-arbitrator shall be selected and appointed by the Appointing Committee pursuant to Article 13.2.

20.3: In the absence of a joint nomination by either the Claimants or the Respondents, the Appointing Committee may, in its discretion, after consultation with the parties:

- (i) select and appoint pursuant to Article 13.2 a co-arbitrator for the parties who have not jointly nominated a co-arbitrator and appoint the co-arbitrator nominated by the opposing side; or
- (ii) select and appoint pursuant to Article 13.2 a co-arbitrator both for the parties who have not jointly nominated a co-arbitrator and for the opposing side, in which case any prior party nomination shall be considered void.

20.4: Articles 12.2 and 12.3 shall apply with respect to the nomination or appointment of the President.

20.5: Where an additional party has been joined pursuant to Article 19, the additional party, with respect to the nomination of co-arbitrators, may nominate an arbitrator only either jointly with the Claimant(s) or jointly with the Respondent(s). In the absence of a joint nomination, the Appointing Committee may, in its discretion, after consultation with the parties

- (i) apply, *mutatis mutandis*, Article 20.3 (i) for the co-arbitrators;
- (ii) apply, *mutatis mutandis*, Article 20.3 (ii) for the co-arbitrators; or
- (iii) select and appoint the co-arbitrators as well as the President pursuant to Article 13.2.

When Article 20.5 (i) and (ii) apply, Articles 12.2 and 12.3 shall apply with respect to the nomination or appointment of the President. When Article 20.5 (ii) and (iii) apply, and when an appointment is made by the Appointing Committee, any prior party nomination shall be deemed void.

The Proceedings before the Arbitral Tribunal

Article 21 Rules of Procedure

21.1: The parties shall be treated equally. Each party shall have a right to be heard in adversarial proceedings.

21.2: The Rules shall apply to the proceedings before the arbitral tribunal except to the extent that the parties have agreed otherwise.

21.3: When the Rules are silent as to the procedure to be applied in the proceedings before the arbitral tribunal, such procedure shall be determined by agreement of the parties, in the absence of which the arbitral tribunal shall decide upon the procedure in its discretion, after consultation with the parties.

21.4: The arbitral tribunal shall apply all mandatory provisions of the arbitration law applicable at the seat of the pending arbitration.

Article 22 Seat of the Arbitration

22.1: If the parties have not agreed upon the seat of the arbitration, then it shall be fixed by the arbitral tribunal.

22.2: Unless the parties have agreed otherwise, the arbitral tribunal may decide to undertake any or all acts in the proceedings at a location other than the seat of the arbitration.

Article 23 Language of the Arbitration

If the parties have not agreed upon the language of the arbitration, the arbitral tribunal shall fix the language of the arbitration.

Article 24 Rules of Law Applicable to the Merits

24.1: The parties may agree upon the rules of law to be applied to the merits of the dispute.

24.2: If the parties have not agreed upon the rules of law to be applied to the merits of the dispute, the arbitral tribunal shall apply the rules of law that it deems to be appropriate.

24.3: The arbitral tribunal shall decide on the merits in accordance with the provisions of the contract between the parties, if any, and shall take into account any relevant trade usages.

24.4: The arbitral tribunal may not decide *ex aequo et bono* or act as an *amiable compositeur*, unless the parties have expressly agreed thereto.

Article 25 Interim Relief

25.1: Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of a party, order interim or conservatory measures and may amend, suspend or revoke any such measure. The arbitral tribunal shall transmit the request to the other party for comments. The arbitral tribunal may request any party to provide appropriate security in connection with such measures.

25.2: In exceptional circumstances, the arbitral tribunal may rule on a request pursuant to Article 25.1 without giving prior notice to or receiving comments from the other party, if otherwise it would risk frustrating the purpose of the measure. In such case, the arbitral tribunal shall notify the other party of the request, at the latest, when ordering the measure. The arbitral tribunal shall promptly grant the other party a right to be heard. Thereafter, the arbitral tribunal shall confirm, amend, suspend or revoke the measure.

25.3: The parties may request interim or conservatory measures from any competent court at any time.

Article 26 Encouraging Amicable Settlements

Unless any party objects thereto, the arbitral tribunal shall, at every stage of the arbitration, seek to encourage an amicable settlement of the dispute or of individual disputed issues.

Article 27 Efficient Conduct of the Proceedings

27.1: 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.

27.2: The arbitral tribunal shall hold a case management conference as soon as possible after its constitution, in principle within 21 days.

27.3: When the parties are represented by outside counsel, they are also encouraged to attend the case management conference in person or with an in-house party representative, together with such outside counsel. Any Dispute Manager who has been duly appointed pursuant to Article 2.2 of the Rules may, with the authorization of the arbitral tribunal, attend the case management conference.

27.4: During the case management conference, the arbitral tribunal shall discuss with the parties the procedural rules to be applied in the proceedings pursuant to Article 21 as well as the procedural timetable.

With a view to increasing procedural efficiency, the arbitral tribunal shall specifically discuss the following with the parties:

- (i) each of the measures set forth in Annex 3 (Measures for Increasing Procedural Efficiency) in order to determine whether any of them should be applied;
- (ii) the provisions of Annex 4 (Expedited Proceedings) in order to determine whether they should be applied;
- (iii) the possibility of using mediation or any other method of amicable dispute resolution to seek the amicable settlement of the dispute or of individual disputed issues.

27.5: During or as soon as possible after the case management conference, the arbitral tribunal shall issue a procedural order and a procedural timetable.

27.6: The arbitral tribunal may hold additional case management conferences as needed and may issue additional procedural orders or amend the procedural timetable as needed.

27.7: In the first case management conference or, if necessary, in additional case management conferences, the arbitral tribunal shall discuss with the parties whether to employ experts and, if so, how to efficiently conduct the expert procedure.

27.8: The arbitral tribunal shall also transmit to the DIS a copy of each procedural order and the procedural timetable as well as any amendments thereto.

Article 28 Establishing the Facts, Tribunal-Appointed Expert

28.1: The arbitral tribunal shall establish the facts of the case that are relevant and material for deciding the dispute.

28.2: For this purpose, the arbitral tribunal may, *inter alia*, on its own initiative, appoint experts, examine fact witnesses other than those called by the parties and order any party to produce or make available any documents or electronically stored data. The arbitral tribunal shall not be limited to admit only evidence offered by the parties.

28.3: The arbitral tribunal shall consult with the parties before appointing an expert. Any expert appointed by the arbitral tribunal shall be impartial and independent of the parties. The Arbitral Tribunal shall apply the provisions of Article 9 and Article 15, *mutatis mutandis*, to any tribunal-appointed expert, provided, however, that the arbitral tribunal shall assume with respect to the expert the function that the DIS has with respect to the arbitral tribunal.

Article 29 Oral Hearing

29.1: The arbitral tribunal shall hold an oral hearing if:

- (i) all of the parties have so agreed; or
- (ii) any party so requests, unless all of the parties have agreed not to hold oral hearings.

In all other cases, the Arbitral Tribunal shall hold an oral hearing when it determines in its discretion, after consultation with the parties, that an oral hearing is necessary.

29.2: A record shall be kept of all oral hearings using appropriate means, which may include verbatim transcripts.

Article 30 Default of a Respondent

In the event of a default of a Respondent, the arbitral tribunal shall proceed with the arbitration. The factual allegations of the Claimant shall not be considered as having been admitted by the Respondent as a result of its default.

Article 31 Closing of Proceedings

After the last hearing or the last admitted Submission, whichever is later, the arbitral tribunal shall close the proceedings by a procedural order that shall also be sent to the DIS. No evidence or Submissions may be filed after the closing of the proceedings, except with the prior leave of the arbitral tribunal.

Costs

Article 32 Costs of the Arbitration

The costs of the arbitration shall include:

- (i) the arbitrators' fees and expenses;
- (ii) the fees and expenses of any expert appointed by the arbitral tribunal;
- (iii) the reasonable costs of the parties that were incurred in connection with the arbitration, including legal fees, fees of experts and expenses of any witnesses; and
- (iv) the Administrative Fees.

Article 33 Arbitral Tribunal's Costs Decisions

33.1: The arbitral tribunal may make decisions, including interim decisions, concerning the costs of the arbitration at any time during the course of the arbitration. Only the DIS may make decisions pursuant to Articles 32 (i) and (iv).

33.2: The arbitral tribunal shall decide on the allocation of the costs of the arbitration between the parties.

33.3: The arbitral tribunal shall make decisions concerning the costs of the arbitration in its discretion. In so doing, it shall take into account all circumstances that it considers to be relevant. Such circumstances may include the outcome of the arbitration and the extent to which the parties have conducted the arbitration efficiently.

Article 34 Arbitrators' Fees and Expenses

34.1: The arbitrators shall be entitled to fees and reimbursement of their expenses, except as otherwise provided in the Rules.

34.2: The arbitrators' fees and expenses shall be calculated pursuant to the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration, except as provided in Article 34.4; provided, however, that the Arbitration Council may reduce the fees of any arbitrator pursuant to Article 37. No separate fee agreements between the parties and the arbitrators shall be made or performed. The expenses of the arbitrators shall be reimbursed to the extent and in the amount provided in the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration.

34.3: The DIS shall pay the fees and expenses of the arbitrators after the termination of the arbitration. At the arbitral tribunal's request, the Arbitration Council may grant an advance on the arbitrators' fees in an amount that it considers to be appropriate in view of the stage of the proceedings. Any fees, expenses or advances shall be paid by the DIS out of the Deposit pursuant to Article 35.1.

34.4: When the arbitration has been terminated prior to the making of a final award or by an award by consent, the Arbitration Council shall, in its discretion and after consultation with the parties and the arbitral tribunal, fix the arbitrators' fees. In so doing, it 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 for the complexity and economic importance of the dispute.

34.5: When the mandate of an arbitrator has been terminated pursuant to Article 16.1, the Arbitration Council shall in its discretion determine whether to pay any fees or reimburse any expenses of the arbitrator whose mandate was terminated, and if so in what amount. In making such determination, the Arbitration Council shall take into account the reasons for the premature termination of the mandate and the circumstances of the arbitration.

Article 35 Deposit for Fees and Expenses of the Arbitral Tribunal

35.1: The parties shall provide a security for the fees and expenses of the arbitrators by paying an amount that the DIS shall calculate on the basis of Article 36 and shall fix during the course of the arbitration (the “Deposit”).

35.2: Before constitution of the arbitral tribunal, the DIS shall fix the amount of an initial deposit and set a time limit for payment by the parties. The DIS may in its discretion request both parties or only one party to pay the initial deposit.

35.3: At a later point in time, the DIS shall fix the amount of the Deposit and shall set a time limit for payment by the parties. The Deposit shall be paid by the Claimant and the Respondent in equal shares. Any initial deposit already paid by the parties shall be deducted. The amount of the Deposit may be equal to the amount of the initial deposit.

35.4: If a party fails to pay its share of the initial deposit or the Deposit, any other party may substitute such payment without prejudice to the decision of the arbitral tribunal pursuant to Article 33.2 on the allocation of the costs of the arbitration between the parties.

35.5: If the parties have not paid the initial deposit or the Deposit in full, the DIS may terminate the proceedings pursuant to Article 42.5.

35.6: The DIS may increase or decrease the amount of the initial deposit or the Deposit at any time.

35.7: In a Multi-Party Arbitration (Article 18), the Arbitration Council may fix the share of the initial deposit and the Deposit for each party separately and in different amounts or it may fix several Deposits.

Article 36 Basis for Calculation of Deposits and Administrative Fees

36.1: The initial deposit, the Deposit and the Administrative Fees, as well as any later increases or decreases thereto, shall be calculated on the basis of the amount in dispute pursuant to the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration.

36.2: The arbitral tribunal shall determine the amount in dispute after consultation with the parties.

36.3: Within 14 days after the determination of the amount in dispute by the arbitral tribunal pursuant to Article 36.2, any party may request the Arbitration Council to reconsider the arbitral tribunal's determination. The Arbitration Council may either confirm or modify the amount in dispute determined by the Arbitral Tribunal. Any such confirmation or modification by the Arbitration Council shall be solely for the purpose of calculating the amounts of the initial deposit, the Deposit and the Administrative Fees.

Termination of the Arbitration by Award or otherwise

Article 37 Time Limit for the Final Award

The Arbitral Tribunal shall send the final award to the DIS for review pursuant to Article 39.3, in principle within three months after the last hearing or the last authorized Submission, whichever is later. The Arbitration Council, in its discretion, may reduce the fee of one or more arbitrators based upon the time taken by the Arbitral Tribunal to issue its final award. In deciding whether to reduce the fee, the Arbitration Council shall consult the Arbitral Tribunal and take into consideration the circumstances of the case.

Article 38 Effect of the Arbitral Award

Each arbitral award shall be final and binding on the parties.

Article 39 Content, Form and Transmission of the Arbitral Award

39.1: Each arbitral award shall be made in writing and shall state:

- (i) the names and addresses of the parties, any designated counsel representing a party in the arbitration and the arbitrators;
- (ii) the arbitral tribunal's decision and the reasons upon which it is based, unless the parties have agreed that reasons need not be given or the award is by consent pursuant to Article 41;
- (iii) the seat of the arbitration; and
- (iv) the date of the award.

39.2: In the final award, the Arbitral Tribunal shall state the costs of the arbitration and shall decide on their allocation between the parties pursuant to Article 33.

39.3: The arbitral tribunal shall send a draft of the award to the DIS for review. 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.

39.4: The award shall be signed by the arbitral tribunal. If an arbitrator does not sign the award, the reason therefor shall be explained in the award.

39.5: The arbitral tribunal shall transmit to the DIS as many originals of the signed award as are needed in order to provide an original to each party and the DIS.

39.6: The DIS shall transmit one original of the award to each party provided that all Deposits and Administrative Fees have been paid in full. Articles 4.6 and 4.7 shall apply, *mutatis mutandis*.

39.7: The award shall be deemed to have been made on the date and at the seat of the arbitration stated in the award.

Article 40 Correction of the Arbitral Award

40.1: The arbitral tribunal shall, upon the request of any party:

- (i) correct clerical, typographical or computation errors and any other errors of a similar nature; and
- (ii) render a supplementary award upon any claims that were made in the arbitration but were not decided in the arbitral award.

40.2: The arbitral tribunal may, upon the request of any party, interpret the arbitral award and clarify the dispositive section thereof.

40.3: A request by a party pursuant to Articles 40.1 or 40.2 shall be submitted to the DIS within 30 days after the transmission of the arbitral award. The DIS shall promptly transmit any such request to the arbitral tribunal.

40.4: The arbitral tribunal shall consult the other party and shall decide upon the request within 30 days after the receipt of the request by the President of the arbitral tribunal.

40.5: After consultation with the parties, the arbitral tribunal may also make corrections pursuant to Article 40.1 on its own initiative. The corrections shall be made within 60 days after the date on which the award was made pursuant to Article 39.7.

40.6: Articles 38 and 39 shall apply, *mutatis mutandis*, to any decision to correct the arbitral award pursuant to this Article 40.

Article 41 Award by Consent

41.1: At the request of the parties, the Arbitral Tribunal may record a settlement in an award by consent unless it considers that there are serious grounds not to do so.

41.2: At the request of all of the parties, the Arbitral Tribunal may record in the form of an award by consent a settlement agreement or a decision arising out of proceedings pursuant to:

- the DIS Mediation Rules;
- the DIS Conciliation Rules;
- the DIS Rules on Adjudication;
- the DIS Rules on Expertise; or
- the DIS Rules on Expert Determination

unless it considers that there are serious grounds not to do so.

41.3: The provisions of Articles 38 to 40 shall apply, *mutatis mutandis*, to awards by consent.

Article 42 Termination of the Arbitration before the Making of a Final Award

42.1: The arbitration may be terminated before the arbitral tribunal makes its final award, either by the arbitral tribunal pursuant to Article 42.2 or by the DIS pursuant to Articles 42.4, 42.5 or 42.6.

42.2: The arbitral tribunal shall terminate the arbitration by way of a termination order:

- (i) if all of the parties agree to terminate the arbitration;
- (ii) if one of the parties requests a termination order and none of the other parties objects or, if there is an objection, the arbitral tribunal considers that the objecting party has no legitimate interest in the continuation of the arbitration;
- (iii) if the parties fail to pursue the arbitration even after being requested to do so by the arbitral tribunal; or
- (iv) if the arbitral tribunal considers that, for any other reason, the arbitration cannot be continued.

42.3: Any termination order issued by the arbitral tribunal is without prejudice to a party's right to resubmit its claims in a new proceeding.

42.4: Prior to the constitution of the arbitral tribunal, the DIS may, after consultation with the parties, decide to terminate the arbitration:

- (i) if the parties have agreed that the arbitration be terminated;
- (ii) if the DIS considers that it is not possible to constitute the arbitral tribunal pursuant to the Rules;
- (iii) if the parties fail to pursue the arbitration even after being requested to do so by the DIS; or
- (iv) if the DIS considers that, for any other reason, the arbitration cannot be continued.

42.5: Prior to or after the constitution of the arbitral tribunal, the DIS may decide to terminate the arbitration if the parties fail within the set time limit to pay in full any initial deposits, Deposits or Administrative Fees requested by the DIS pursuant to the Rules. If the arbitral tribunal is already constituted, the arbitral tribunal may, upon consultation with the DIS, suspend its work prior to the termination.

42.6: The DIS may, subject to the provision set forth in the second sentence of Article 5.4, terminate the arbitration at any time if a party has failed to comply with the request of the DIS to supplement a filing pursuant to Articles 5, 7 or 19 within the time limit set by the DIS.

42.7: A termination of the arbitration by the DIS in whole or in part pursuant to Articles 42.4, 42.5 or 42.6 is without prejudice to a party's right to resubmit its claims in a new proceeding.

Miscellaneous

Article 43 Waiver of Right to Object

If a party does not raise an objection with respect to any failure to comply with the Rules or with any other provisions applicable to the arbitration promptly after it first becomes aware of such failure, such party shall be deemed to have waived its right to object.

Article 44 Confidentiality

44.1: Unless the parties agree otherwise, the Parties and their outside counsel, the arbitrators, the DIS employees and any other persons associated with the DIS who are involved in the arbitration shall not disclose to anyone any information concerning the arbitration, including in particular the existence of the arbitration, the names of the parties, the nature of the claims, the names of any witnesses or experts, any procedural orders or awards and any evidence that is not publicly available.

44.2: Disclosures may nonetheless be made to the extent required by applicable law, by other legal duties or for purposes of the recognition and enforcement or annulment of an arbitral award.

44.3: The DIS may publish statistical data or other general information concerning arbitral proceedings, provided that no party is identified by name and that no particular arbitration is identifiable on the basis of such information. The DIS may publish an arbitral award only with the prior written consent of all of the parties.

Article 45 Limitation of Liability

45.1: An arbitrator shall not be liable to any person for any acts or omissions in connection with such arbitrator's decision-making in the arbitration, except in case of an intentional breach of duty.

45.2: For any other acts or omissions in connection with the arbitration, an arbitrator, the DIS, its statutory organs, its employees, and any other person associated with the DIS who is involved in the arbitration shall not be liable, except in case of an intentional breach of duty or gross negligence.