

# DIS Mediation Rules

## DIS MEDIATION RULES\*

### German Institution of Arbitration (DIS)

(in force as from May 1, 2010)

#### Mediation agreement

The German Institution of Arbitration advises all parties wishing to make reference to the DIS Mediation Rules already at the conclusion of the contract to use the following Mediation clause in the event of a conflict:

**"With respect to all disputes arising out of or in connection with the contract (... description of the contract ...) mediation proceedings shall be conducted pursuant to the Mediation Rules of the German Institution of Arbitration (DIS).**

Additional provisions concerning the number of mediators, the language and/or the place of mediation should be considered.

It should be noted that mediation agreement pursuant to the DIS Mediation Rules may be concluded any time, also with regard to already existing disputes.

#### DIS Mediation Rules

##### (DIS-MedO)

#### Section 1

##### Scope of application

1.1 The Mediation Rules set forth herein apply where the parties have agreed to conduct mediation proceedings pursuant to these Rules with respect to particular disputes.

1.2 Unless otherwise agreed by the parties, the Mediation Rules in effect of the date of commencement of the mediation proceedings shall apply.

#### Section 2

##### Initiation and commencement

2.1 The party wishing to initiate the mediation proceedings (applicant) shall send a written request to the other party (opponent). The request shall contain the names and contact details of the parties and their counsel, if available. It shall further contain a short summary of the

conflict, the facts and circumstances which gave rise to the conflict, the asserted claims and, if possible, the amount in dispute. Multiple applicants within the meaning of sentences 1 and 2 shall jointly send the request.

2.2 If the request for initiation of the mediation proceedings provides that more than one other party shall be involved in the proceedings, the request shall be sent to each of these parties.

2.3 The request shall be submitted in a number of copies at least sufficient to provide one copy for each mediator and the DIS. If the copies are not submitted in the requisite number, the DIS Main Secretariat requests the applicant to make a corresponding supplementation and sets a time-limit for compliance. Upon filing the request the applicant shall pay to the DIS the procedural fee in accordance with the schedule of costs (appendix to section 11 subsection 5) in force on the date of receipt of the request by the DIS Main Secretariat. The DIS Main Secretariat invoices the applicant for the DIS procedural fee and, if payment has not already been made, sets a time-limit for payment.

2.4 Mediation proceedings commence upon receipt of the copy of the request by the DIS Main Secretariat (section 2 subsection 3), provided that within the time-limit set by the DIS, which may be subject to reasonable extension, the DIS has received the number of required copies of the request pursuant to subsection 3 and the DIS procedural fee pursuant to subsection 3 has been paid. The DIS informs the parties about commencement of the proceedings without undue delay.

### **Section 3**

#### **Role of the mediator**

3.1 The mediator shall organize the mediation proceedings pursuant to the provisions of these rules and apart from that at his discretion. The parties may agree to deviate from the rules.

3.2 The mediator shall be impartial and independent. In particular he may not legally or otherwise represent or consult the parties or third persons on legal issues, which are or have been the subject-matter of the mediation proceedings. The mediator shall disclose to the parties and the DIS all circumstances likely to give rise to doubts as to his independence and impartiality without undue delay.

3.3 A person who consults or represents or who consulted or represented one of the parties on the same issues before the commencement of the mediation proceedings may not act as mediator.

3.4 The mediator shall encourage the settlement of the conflict between the parties in an orderly and efficient manner. He may make proposals for the resolution of the dispute upon consensual wishes of all parties.

### **Section 4**

## **Nomination of the mediator**

4.1 The parties may freely chose and nominate a mediator. Unless otherwise agreed by the parties, the mediation shall be conducted by one mediator.

4.2 Where the parties have agreed on mediation proceedings with one mediator, they shall jointly nominate him to the DIS within one month after commencement of the mediation proceedings, unless they have agreed on the nomination by the DIS. Upon request, the DIS Main Secretariat will make suggestions for the nomination of a mediator.

4.3 Where the parties have agreed on mediation proceedings with two mediators, the mediator nominated pursuant to section 4 subsection 2 shall nominate the co-mediator upon consent of the parties to the DIS without undue delay.

4.4 If a mediator becomes de jure or de facto unable to perform his functions or for other reasons fails to act, subsections 2 and 3 apply mutatis mutandis to the nomination of a substitute mediator as soon as the default of the initially nominated mediator is established.

4.5 Where the parties fail to nominate a mediator within one month, the mediator shall be nominated by the DIS Appointing Committee upon request of at least one party. The request shall be filed within two weeks after the expiry of the one-month period. After the expiry of the two-weeks time-limit the proceedings are deemed terminated.

4.6 If a party requests the nomination of a mediator by the DIS Appointing Committee, it shall pay the fee for nomination of a mediator in accordance with no. 1.2 of the schedule of costs (appendix to section 11 subsection 5) with the request. The DIS may make the nomination of the mediator contingent on the receipt of payment of the fee.

## **Section 5**

### **Confirmation of the mediator**

The mediator is deemed confirmed upon receipt of his written declaration of acceptance of office by the DIS.

## **Section 6**

### **Course of mediation**

6.1 The mediator and the parties shall jointly agree on a meeting agenda and a time schedule. To prepare for the meeting, the mediator may gather information about the cause and subject-matter of the conflict in written form or in a preparatory meeting. The mediator shall prepare the meeting. He may make preparative remarks or suggestions to the parties.

6.2 The mediation meetings shall be conducted in the presence of the parties. Communications between the mediator and one party on the subject-matter are admissible

only with the express consent of the other party. In the case of a one-to-one communication between the mediator and one of the parties, the mediator shall keep the information thus disclosed in confidence, unless the respective party expressly authorizes him to make certain information available to the other parties.

6.3 As a rule, the parties shall personally participate in the meetings. Legal persons as well as associations and organizations shall be represented by their organs or representatives, who are familiar with the dispute and authorized to settle the dispute amicably. Attorneys and other counsel may be involved.

6.4 The mediator is not obliged to take meeting minutes.

6.5 The mediation proceedings are confidential.

## **Section 7**

### **Place of mediation**

The parties shall agree on the place of the mediation meeting. Failing an agreement of the parties, the mediation meeting shall take place in the premises of the DIS Main Secretariat .

## **Section 8**

### **Termination of proceedings**

8.1 The mediation proceedings are terminated:

(1) if the parties have settled the dispute. In the case of partial settlement, the mediation proceedings are terminated only if at least one party declares that in its opinion the disputed issues may not be settled;

(2) by declaration of one party, provided that at least one mediation meeting or no mediation meeting within two month after confirmation of the mediator took place. The written declaration is addressed to the other party and the mediator. Specification of reasons is not necessary;

(3) if nomination of a mediator or mediators does not occur within the set time-limit and a substitute nomination of a mediator by the DIS not requested by a party pursuant to section 4 subsection 5;

(4) by written declaration of the mediator addressed to both parties that the mediation proceedings are terminated;

(5) if the mediation proceedings have not been pursued within three months after their commencement. The mediation proceedings have not been pursued, if no written or oral preliminary examination nor a mediation meeting took place

8.2 The mediator declares the termination of the proceedings in writing. Upon request of a party he shall issue a written confirmation that a settlement could not be reached in the mediation proceedings. The DIS declares the termination of the proceedings in writing under section 8 subsection 1 no. (3).

## **Section 9**

### **Statute of limitations, temporary waiver of action**

9.1 The period of limitation is suspended for such claims that are subject to mediation proceedings from the commencement of the mediation proceedings (section 2 subsection 4).

9.2 The suspension ceases at the earliest three month after the termination of the mediation proceedings pursuant to section 8.

9.3 The parties undertake not to bring an (arbitration) action for such claims that are still subject to pending mediation proceedings. The parties are not precluded from applying to a court for interim measures of protection.

## **Section 10**

### **Confidentiality**

10.1 The parties, the mediator and the persons at the DIS Main Secretariat involved in the administration of mediation proceedings shall maintain confidentiality regarding the proceedings, and in particular regarding the parties involved and the documents exchanged.

10.2 This does not apply to information or documents which were known before the mediation proceedings or which demonstrably would otherwise have become known.

10.3 Contractual confidentiality and non-disclosure obligations remain unaffected.

10.4 The DIS may publish information on mediation proceedings in a compilation of statistical data, provided such information excludes identification of the persons involved.

## **Section 11**

### **Costs**

11.1 Each party shall pay half of the costs of the mediation proceedings. Each party shall bear its own costs, including legal fees, if any.

11.2 The mediator is entitled to a fee and reimbursement of expenses as well as to VAT levied on the fee or expenses, if applicable. The parties are jointly and severally liable to the mediator for payment of the costs of the proceedings.

11.3 The mediator's fee is measured by the time spent by him. Travel and accommodation costs shall be reimbursed separately against submission of receipts for the expenses. The mediator is entitled to reasonable advance payments, which shall be paid by the parties in equal shares.

11.4 The DIS is entitled to a registration fee and a fee (fees) for nomination of the mediator, as the case may be, as well as to VAT levied on both fees, if applicable. The parties are jointly and severally liable to the DIS for payment of the fees.

11.5 The amount of fees and expenses ensues from the appendix which is part of these Mediation Rules.

## **Section 12**

### **Liability**

The mediator, the DIS, its organs and employees are only liable for intentional misconduct.

## **Appendix to Section 11 Subsection 5 DIS Mediation Rules**

### **Schedule of Costs for DIS Mediation Proceedings**

#### **1. DIS fees**

1.1 The procedural fee (section 2 subsection 4) amounts to € 250.00.

1.2 The fee for nomination of a mediator by the DIS amounts to € 250.00 (section 4 subsection 6).

#### **2. Mediator's fee**

The fees of a mediator amount to € 300.00 per hour, unless agreed otherwise.

#### **3. VAT**

The fees specified in nos. 1 and 2 are subject to VAT.

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