

## DIS-Arbitration Clause 98

### DIS MODEL ARBITRATION AGREEMENT

The German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V., DIS) advises all parties wishing to make reference to the DIS Arbitration Rules to use the following **arbitration clause**:

**"All<sup>[1]</sup> disputes<sup>[2]</sup> arising in connection<sup>[3]</sup> with this contract<sup>[4]</sup> or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law<sup>[5]</sup>."**

The following points – particularly in the case of a foreign element – should be considered:<sup>[6]</sup>

- **The place of arbitration is ...<sup>[7]</sup>**
- **The number of arbitrators is ...<sup>[8]</sup>**
- **The language of the arbitral proceedings is ...<sup>[9]</sup>**
  
- **The applicable substantive law is ...<sup>[10]</sup>**

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<sup>[1]</sup> The arbitration agreement should explicitly refer to "all" disputes since it is otherwise difficult to determine which disputes are covered by the clause.

<sup>[2]</sup> An arbitration agreement is only valid if the subject-matter of the proceedings is arbitrable; for German law see Section 1030 ZPO.

<sup>[3]</sup> This wording is comprehensive and leads to the result that non-contractual claims which arise "in connection with the agreement" are also covered.

<sup>[4]</sup> To the extent the arbitration agreement is entered into as a separate agreement (so-called "Schiedsabrede") and not in the form of a clause in a contract (so-called "Schiedsklausel"), the contract to which the arbitration agreement relates should be specified precisely.

<sup>[5]</sup> A significant characteristic of arbitration as a private form of jurisdiction is that the jurisdiction of state courts (but not interim measures of protection, see Section 1033 ZPO and Section 20 DIS Arbitration Rules) is excluded. To avoid confusion, clarification in the arbitration agreement is recommended. In some legal systems, such addition may be required.

<sup>[6]</sup> The issues contained in the first three items should be reflected by corresponding supplementation of the arbitration agreement. To the extent the substantive law applicable to the contract has not been agreed elsewhere in the contract, this should be contained in the arbitration agreement.

<sup>[7]</sup> To the extent a place of arbitration in Germany is agreed upon Sections 1025 et seq. ZPO - which allow further agreement by the parties - apply. In the case of agreement upon a place of arbitration outside of Germany, mandatory provisions of procedural law applicable at that place should be considered. The place of arbitration determines the procedural framework of the proceedings, jurisdiction in case of any necessary recourse to the state courts and is, as a general rule, a crucial factor for the methodology used in fact-finding and the taking of

evidence. It is not, however, necessary to conduct the arbitration at this place.

<sup>[8]</sup> Pursuant to Section 3 DIS Arbitration Rules, the arbitral tribunal generally consists of three arbitrators. The parties may, however, agree to have the dispute determined by a sole arbitrator.

<sup>[9]</sup> To the extent the language has not already been agreed to by the parties in the arbitration clause, the arbitral tribunal decides on this issue after its constitution (Section 22 subsec. 1 DIS Arbitration Rules). Where there has been no agreement by the parties on the language, they do not know at the time of commencing proceedings what language qualifications counsel and the arbitrators must have.

<sup>[10]</sup> The substantive law applicable to the dispute (see also Footnote 6) must be distinguished from the procedural law applicable to the arbitration (see also Footnote 7).