

DIS

DIS Rules on Expertise

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DIS

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Deutsche Institution für Schiedsgerichtsbarkeit

AGREEMENT ON EXPERTISE*

The German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V., DIS) advises all parties wishing to obtain a non-binding expert opinion in order to clarify a dispute and wishing to make an arrangement for the regulation of the conflict situation by reference to the DIS Rules on Expertise already at the conclusion of the contract, to use the following agreement on expertise:

“With respect to all disputes arising out of or in connection with the contract (... description of the contract ...) expertise proceedings pursuant to the DIS Rules on Expertise of the German Institution of Arbitration (DIS) shall be conducted prior to the initiation of court or arbitration proceedings.”

It should be noted that an agreement on the conduct of expertise proceedings pursuant to the DIS Rules on Expertise may be concluded any time, also with regard to already existing disputes.

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

DIS RULES ON EXPERTISE (non-binding decision)

Section 1 Scope of application

- 1.1 The DIS Rules on Expertise set forth herein apply where the parties wish to obtain a non-binding expert opinion in order to clarify a dispute and for this purpose have agreed upon proceedings pursuant to the Rules on Expertise of the German Institution of Arbitration.
- 1.2 Unless otherwise agreed by the parties, the Rules on Expertise in effect on the date of commencement of the expertise proceedings shall apply.
- 1.3 The subject-matter of the expertise proceedings is solely the disputed issue identified in the request (section 2 subsection 1). Additional or other disputed issues may only be clarified in new expertise proceedings.

Section 2 Initiation and commencement of the proceedings, substantiation of the request

- 2.1 The party wishing to initiate the expertise proceedings (applicant) shall file a written request to obtain an expert opinion pursuant to the DIS Rules on Expertise with the DIS Main Secretariat. Upon filing such a request with the DIS Main Secretariat, the applicant shall send a copy of the request to the other party of the agreement pursuant to section 1 subsection 1 (opponent). The request shall be fully substantiated.
- 2.2 The request shall be filed in two copies. If the number of copies is insufficient, 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 20 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.
- 2.3 The expertise proceedings commence upon receipt of the request by the DIS Main Secretariat (subsection 1), provided that within the time-limits set by the DIS, which may be subject to reasonable extension, the

DIS has received the number of copies of the request required pursuant to subsection 2 and the DIS procedural fee pursuant to subsection 2 has been paid. The DIS informs the parties about commencement of the proceedings without undue delay.

Section 3

Number and qualifications of the expert

- 3.1 The expert opinion shall be issued by one expert.
- 3.2 Only natural persons may be nominated as experts. Upon request, the DIS will make suggestions for the selection of the expert.
- 3.3 The expert must be impartial and independent throughout the entire course of the proceedings and shall disclose to the parties and the DIS Main Secretariat without undue delay all circumstances likely to give rise to doubts as to his impartiality or independence throughout the expertise proceedings.

Section 4

Nomination and confirmation of the expert

- 4.1 Within two weeks after commencement of the proceedings (section 2 subsection 3), the parties shall agree on the expert and notify the DIS thereof.
- 4.2 Where the parties have not agreed on the expert within the time-limit of two weeks after commencement of the proceedings, each party may request the nomination of the expert by the DIS Appointing Committee. Upon filing the request the applicant shall pay to the DIS the fee for nomination of an expert pursuant to the schedule of costs (appendix 1 to section 20 subsection 5) in force on the date of receipt of the request by the DIS Main Secretariat.
- 4.3 The DIS Appointing Committee takes into consideration the qualifications required, necessary language skills, as the case may be, as well as other criteria submitted by the parties when nominating the expert.
- 4.4 The DIS sends the request in writing and these Rules on Expertise to the nominated expert without undue delay. The DIS requests the expert to submit his declaration of acceptance of the office in accordance with these Rules on Expertise.

- 4.5 Upon receipt of the written declaration of acceptance of the office by the DIS, the expert is deemed confirmed. The DIS informs the parties accordingly.

Section 5

Reply to the request

The opponent shall reply in writing to the request within four weeks after commencement of the proceedings and shall send his reply to the applicant and the expert.

Section 6

Further briefs

- 6.1 The applicant may comment in writing on the reply to the request within two weeks after its receipt. The opponent may answer the comment in writing within two weeks after its receipt.
- 6.2 Further briefs are only admissible if the expert expressly requests the parties to file them (section 11 subsection 3).

Section 7

Submissions of the parties, correspondence

- 7.1 The submissions in the written request and/or the reply to the request, respectively, shall be complete. The expert is free to disregard submissions which according to his evaluation could have been made in an earlier brief.
- 7.2 Briefs and exhibits shall be filed in hardcopy; additional copies in electronic form are permissible.
- 7.3 Correspondence between the expert and the parties may be conducted by email. The parties shall provide the expert with their respectively binding email addresses within a week after his confirmation.
- 7.4 All briefs, documents or other communications which are submitted to the expert by one of the parties shall be simultaneously submitted to the other party.

Section 8

Compliance with time-limits

- 8.1 The time-limits for the reply to the request (section 5) and for further briefs (section 6) are binding upon the parties. They are not subject to any extension, even if serious reasons are submitted, unless otherwise agreed by the parties.

- 8.2 The expert is free to disregard briefs which have been filed late.

Section 9

Documents, expert report

- 9.1 The parties may submit documents, written witness statements and expert reports with their briefs.
- 9.2 The following applies to the submission of expert reports:
- (1) The applicant may enclose an expert report with his request. In such case, the opponent will be granted an adequate time-limit for obtaining a counter-report.
 - (2) In the event that the opponent submits an expert report which, in the expert's opinion, is not limited to a reply to the applicant's expert report, the applicant shall, upon his request, be granted an appropriate time-limit for obtaining a counter-report.
 - (3) Further expert reports may not be submitted with further briefs or in any other way; expert reports which are nonetheless submitted shall be disregarded by the expert.
 - (4) The time-limits granted pursuant to nos. (1) and (2) may not cause the six-month time-limit set forth in section 16 subsection 2 to be exceeded.

Section 10

Oral hearing

An oral hearing shall be held if so requested by a party. In the absence of such a request, the expert decides at his discretion whether to hold an oral hearing.

Section 11

Further organization of proceedings

- 11.1 Apart from the rules set forth in sections 5-10, the expert may organize the proceedings at his discretion. He may request the submission of documents, carry out a site-inspection and make proposals for an amicable settlement.
- 11.2 The appointment of other experts or specialists by the expert is only possible with the parties' consent.
- 11.3 The expert may grant an opportunity to comment in writing on certain questions within a time-limit fixed by him.

Section 12

Equal treatment, due process

The parties shall be treated equally. Each party shall be given full opportunity to present its case.

Section 13

Decisions

- 13.1 In the event that a party does not make any written submissions or exceeds time-limits for the submission of briefs, the expert may make a decision based on the record.
- 13.2 The expert shall provide reasons in writing for all decisions. The decisions are not binding upon the parties.
- 13.3 The expert dispatches the decisions to the parties; the DIS shall receive a copy of the decision.
- 13.4 Decisions shall be made as quickly as possible, normally within four weeks after the oral hearing or after receipt of the last brief, as the case may be, and at the latest six months after commencement of proceedings (section 2 subsection 3), unless both parties have agreed to an extension.

Section 14

Applicable law

The expert shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the subject-matter of the dispute. Failing any such designation by the parties, the expert shall apply the law of the state which he deems appropriate.

Section 15

Temporary waiver of action

- 15.1 The parties shall not bring an (arbitration) action for such claims that are still subject to pending expertise proceedings.
- 15.2 This does not apply to claims for which the expert has not dispatched a decision to the parties within six months after commencement of the expertise proceedings, unless both parties have agreed to an extension.
- 15.3 The expertise agreement does not preclude the parties from applying to a court for interim or securing measures relating to the subject-matter of the exper-

tise proceedings before or after commencement of the expertise proceedings.

Section 16

Termination of proceedings

- 16.1 The expertise proceedings are terminated upon receipt of the expert's decision by the parties or, in the case of a partial decision, upon receipt of the final decision; the date of receipt by the last receiving party is decisive.
- 16.2 The expertise proceedings are terminated at the latest six months after commencement of the proceedings (section 2 subsection 3), unless both parties have agreed to an extension. The six month time-limit is complied with if the expert has dispatched the decision pursuant to section 16 subsection 1 to the parties prior to expiry of the six-month time-limit.
- 16.3 An early termination of expertise proceedings by withdrawal of the request for an expert opinion requires the opponent's consent.

Section 17

Statute of limitations

- 17.1 The period of limitation is suspended for such claims that are subject to expertise proceedings from the commencement of the expertise proceedings (section 2 subsection 3).
- 17.2 The suspension ceases six months after the end of the month in which the expertise proceedings have been terminated.

Section 18

Confidentiality

- 18.1 The parties, the expert and the persons at the DIS Main Secretariat involved in the administration of the proceedings shall maintain confidentiality towards all persons regarding the conduct of the proceedings and, in particular, regarding the parties involved and the documents exchanged. Persons acting on behalf of any person involved in the proceedings shall be obligated to maintain confidentiality.
- 18.2 This does not apply to information or documents which were known before the expertise proceedings or which demonstrably would otherwise have become known.

- 18.3 Contractual confidentiality or secrecy obligations remain unaffected.
- 18.4 Each party is entitled to submit briefs or other documents which are filed in the expertise proceedings, as well as decisions by the expert in subsequent (arbitration) court proceedings. However, oral statements of the parties or persons who have been interviewed for informational reasons may not be cited in (arbitration) court proceedings. In the event that statements are so cited, the (arbitrators) judges must not consider them.
- 18.5 The expert may not be called as a witness for facts which were disclosed to him during the expertise proceedings. This does not apply to such facts which have become known to the expert on the occasion of a site inspection.
- 18.6 The DIS may publish information on expertise proceedings in a compilation of statistical data, provided that the information excludes identification of the persons involved.

Section 19

Exclusion of liability

The expert, the DIS, its officers and employees are only liable for intentional misconduct.

Section 20

Costs

- 20.1 The costs of expertise proceedings shall be equally divided between the parties. Each party shall bear its own costs, including any legal fees.
- 20.2 The expert 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 expert for payment of the costs of the proceedings.
- 20.3 The expert'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 expert is entitled to reasonable advance payments, which shall be equally paid by the parties.
- 20.4 The DIS is entitled to charge a procedural fee and a fee (fees) for the nomination of an expert including any VAT, if applicable. The parties are jointly and severally liable to the DIS for payment of these fees, notwith-

standing any claim for reimbursement by one party against the other.

20.5 The amount of the expert's fee and the DIS fees ensues from the appendix which is part of these Rules on Expertise.

TABLE OF COSTS FOR DIS RULES ON EXPERTISE

1. **DIS fees**

1.1 The procedural fee (section 2 subsection 2) amounts to € 350.00.

1.2 The fee for nomination of an expert (section 4 subsection 2) amounts to € 250.00.

2. **Expert's fee**

The expert's fee amounts to € 300.00 per hour.

3. **VAT**

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

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