

KEY FEATURES OF THE NEW DIS RULES 2018

27 July 2018 | Global
Legal Briefings

The new rules came into force on 1 March 2018.

Drafted concurrently in English and German.

"Civil law" procedural basis, but reflect developments in international arbitration practice since last revision in 1998.

[*First published in Inside Arbitration, Issue 6*](#)

PROMOTION OF EARLY SETTLEMENT

- Not a new feature, but a key part of the DIS approach.
- Unless a party objects, the arbitral tribunal should encourage an amicable settlement between the parties at every stage of the arbitration (Article 26).
- During the case management conference, the arbitral tribunal must address whether it can give a preliminary legal and factual assessment of the case (Article 27.4(i) and annex 3). A common feature in German civil law proceedings, aimed at streamlining proceedings, shortening submissions and enhancing settlement negotiations between the parties. If they don't object, parties waive their right to invoke doubts regarding the arbitral tribunal's impartiality or independence.

NEW DIS BODY "THE ARBITRATION COUNCIL" HAS POWER TO MAKE DECISIONS. SOME OF THESE DECISIONS HAVE BEEN PREVIOUSLY TAKEN BY AN ARBITRAL TRIBUNAL UNDER 1998 DIS RULES

These include:

- Challenges to arbitrators (Article 15.4): Under the previous DIS Rules 1998 the decision on the challenge of an arbitrator was made by the arbitral tribunal itself and not by the DIS. The aim is to reduce the risk that an unsuccessful party will appeal the challenge decision to the state courts.
- Removal of an arbitrator from office where the Arbitration Council considers that the arbitrator is not fulfilling its duties or will not be fulfilling its duties in the future (Article 16.2).
- Uniquely, the new DIS Rules allow for the arbitral tribunal to determine the amount in dispute as they are closest to the matter in dispute, but this can also be referred to the Arbitration Council for modification or confirmation. However, the final decision on arbitrators' fees where arbitration terminated prior to award (Article 34.4) and after an award, based on amount in dispute and the time taken to issue the award (Article 37) rests with the Arbitration Council.

ADMINISTRATION OF ARBITRATORS' FEES

The DIS will now request and administer the deposits for the arbitrators' fees payable by the parties. Under the DIS Rules 1998 the arbitral tribunal had to request and administer the deposits. This was heavily criticised by many arbitrators.

REVIEW OF AWARDS

The DIS will now review an award with regard to form (Article 37.3), but not in terms of content.

CHANGES RELATED TO EFFICIENCY AND EXPEDITION OF PROCEEDINGS

- A number of timescales have been shortened and greater case management obligations imposed:
- Respondent has to nominate its arbitrator within 21 days (instead of 30 days under the DIS Rules 1998) after receipt of the request for arbitration (Article 7.1 (i))
- Deadline for the co-arbitrators to nominate the president was shortened from 30 days to 21 days (Article 12.2).

- Respondent has to file the answer to the request for arbitration within 45 days after receipt of the request (Article 7.2). The DIS Rules 1998 did not stipulate any deadline for a respondent at all and was up to the Tribunal to determine. Delay in the formation of the Tribunal then led to delays in the filing of the answer.
- A case management conference should ideally take place within 21 days after the constitution of the arbitral tribunal (Article 27.2). Article 27.4 obliges the arbitral tribunal, parties and in-house counsel to address and discuss the adoption of measures (listed in annexes 3 and 4 of the DIS Rules 2018) aimed at procedural efficiency. They are also obliged to discuss whether they wish to opt in to the application of the rules of expedited proceedings (annex 4) during the case management conference. Further, they have to discuss whether to empower the arbitral tribunal to give a preliminary assessment of the case and propose a settlement.

MULTI-PARTY, MULTI-CONTRACT AND JOINDER OF ADDITIONAL PARTIES

The DIS Rules 2018 contain new and multi-faceted provisions for multi-party proceedings, multi-contract proceedings and the joinder of additional parties (Articles 8 and 17-19).

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



CATRICE GAYER
COUNSEL, GERMANY

+49 211 69 2222 82513
Catrice.Gayer@hsf.com

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