

THE DANISH INSTITUTE OF ARBITRATION

Dispute Board Rules

Adopted by the Board of the Danish Institute of Arbitration and in force as from 26 May 2014

Article 1

(1) The Dispute Board Rules (hereafter referred to as the Rules) apply when agreed between the parties. The Rules imply that the Danish Institute of Arbitration (hereafter referred to as DIA) shall establish a dispute board (hereafter referred to as DB) which shall consist of one or more members and has the task of assisting the parties in resolving disputes which may arise between the parties during the performance of a contract.

(2) Unless the parties have agreed otherwise, the DB can issue, cf. Articles 14-19:

- a) Non-binding recommendations, and/or
- b) Decisions which are binding and for which the parties shall be deemed to have waived the right to any kind of review as long as such a waiver can validly be made and unless a party submits a written objection to the other party/parties within 14 calendar days from the date of the decision.

(3) The DB may also grant the parties informal assistance in order to resolve a dispute, cf. Article 13.

(4) The competence of the DB terminates when the parties agree to it.

Article 2

(1) The DIA is a non-profit and independent body providing administrative services in relation to settlement of disputes in accordance with the Rules.

(2) The Chairman's Committee of DIA (hereafter referred to as the Chairman's Committee) is composed of the Chairman and the Vice-Chairman of the Board of DIA (hereafter referred to as the Board). The Chairman's Committee carries out the functions and makes the decisions assigned to it under the Rules. If a majority is not attained, the Chairman has the casting vote. If the Chairman or the Vice-Chairman of DIA or both have a conflict of interest or are otherwise prevented from carrying out a function or make a decision, another member of the Board, respectively two other members of the Board, shall replace the Chairman and/or the Vice-Chairman.

(3) The Secretariat of DIA (hereafter referred to as the Secretariat) acts under the direction of a Secretary General. The Secretariat carries out the functions assigned to it under the Rules. The Secretariat or the Secretary General may also carry out functions or make decisions delegated to it by the Chairman's Committee or the Board.

Article 3

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(1) A party wishing to establish a DB under the Rules shall submit a request to DIA.

(2) The request shall as a minimum contain the following information:

- a) The names, addresses, telephone numbers, e-mail addresses of the parties as well as any VAT and company registration numbers.
- b) The names, addresses, telephone numbers and e-mail addresses of the parties' legal counsel, if any.
- c) A description of the contractual relationship from which the intention to set up a DB arises.
- d) Any comments to the number of DB member(s) and information on who the parties wishes to appoint as member(s) by stating the name(s), address(es), telephone number(s) and e-mail address(es), or any professional qualification that a member/members shall possess.

(3) Any documents referred to in the request, and the agreement to apply the Rules, shall be enclosed in the form of original documents or copies thereof.

(4) The request and any exhibits shall be accompanied by as many copies as there are other parties, together with an additional copy for each member of the DB.

Article 4

(1) The request shall be accompanied by the payment to DIA of a registration fee of EUR 1,300 or the equivalent amount in Danish Kroner (DKK). The registration fee is non-refundable.

(2) If the registration fee is not received no later than with the request, the Secretariat shall fix a deadline for payment. Failure to effect payment by such deadline may cause the Secretariat to close the case without prejudice to the possibility of submitting a request on the same issue at a later stage.

Article 5

(1) In addition to the registration fee mentioned in Article 4, the parties shall pay a financial deposit as security for:

- a) The initial costs which are estimated in relation to the establishment of the DB, including a fee to the DB members for becoming conversant with the contractual relationship between the parties and the relevant facts, including possible site visits etc.
- b) The costs related to the opening meeting mentioned in Article 12, and
- c) The DIA's charge for handling the case, cf. Article 22 (3).

(2) The Secretariat shall fix the amount of the financial deposit. Both parties shall usually be asked to pay identical amounts in financial deposit, unless otherwise agreed by the parties or otherwise decided by the Secretariat. In the event that a party does not pay its share, the Secretariat shall require the other party to pay the full financial deposit in order for the DB to be established.

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(3) Failure to pay the financial deposit demanded by the Secretariat within the fixed deadline may cause the Secretariat to close the case without prejudice to the possibility of submitting a new request on the same issue at a later stage.

Article 6

(1) Where the parties have not agreed upon the number of members, the DB shall consist of three members.

(2) All members of the DB shall be available, impartial and independent. The President of the DB shall hold a law degree, unless otherwise agreed between the parties.

(3) Before being confirmed, an appointed DB member shall sign a Declaration of acceptance and of Impartiality and Independence. At the same time, the member shall disclose in writing any circumstances which might give rise to reasonable doubts as to the members' availability, impartiality or independence. A member shall also provide information on his or her professional and educational background, etc. (CV/résumé). The Secretariat shall forward the declaration and CV/résumé to the parties and fix a deadline for any comments.

(4) During the case, the DB members shall immediately disclose in writing to the other members, the parties and the Secretariat any circumstances that should have been disclosed according to (3) had they existed at that time.

(5) A DB member cannot be appointed as a member of an arbitral tribunal in any future arbitral proceedings regarding the case, unless the parties agree otherwise.

Article 7

(1) All appointments of DB members are subject to confirmation by the Chairman's Committee.

(2) Each party may appoint a member of the DB. The third member, who shall be the President of the DB, may be appointed jointly by the parties, before a deadline fixed by the Secretariat.

(3) The Chairman's Committee may decide not to confirm an appointed DB member on the grounds set out in Article 8 (1), in which case the party/parties may appoint another DB member before a deadline fixed by the Secretariat.

(4) Where there are multiple parties with substantially similar interests, they shall act jointly in appointing a DB member.

(5) The President of the DB may have the same nationality and be domiciled in the same country as one of the parties, unless a party request that the President be of a different nationality and be domiciled in a country other than those of the parties.

(6) If the parties have agreed that the DB member/members are to be appointed by DIA, or if a party has not appointed a member, or if the parties have not jointly appointed a member, or if a member has not been appointed in accordance with (4) or (5), the Chairman's Committee shall appoint the said member(s).

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Article 8

(1) A party may challenge a DB member only if it finds that circumstances exist, which give rise to justifiable doubts as to the impartiality or independence of the DB member, or if the party finds that the member does not possess the qualifications agreed on by the parties. A challenge shall be submitted to the Secretariat immediately after the party having become aware of the appointment and the circumstances on which the challenge is based.

(2) Unless the challenged DB member resigns or the parties agree that the DB member shall not be confirmed or that his/her confirmation shall be revoked, the Chairman's Committee shall decide on the challenge.

Article 9

(1) If a DB member resigns, dies or for other reasons is replaced, another member shall be appointed in accordance with the same rules as those that applied to the appointment of the member having resigned, etc.

(2) If a DB member does not act timely and efficiently, or if the member's other duties according to the Rules are not fulfilled, a party may request the Chairman's Committee to decide whether the member shall be replaced. Even in the absence of such a request, the Chairman's Committee may replace a member on the grounds mentioned in the 1st sentence of this paragraph.

Article 10

(1) When the financial deposit mentioned in Article 5 is paid and the DB members are confirmed, the Secretariat shall transmit the case files to the DB members. Henceforth, all correspondence shall be exchanged directly between the DB and the parties with copies to the Secretariat, which follows the developments in the case so that, if necessary, it may assist the DB and the parties in ensuring that the case progresses effectively and efficiently.

Article 11

(1) The DB shall be fair and impartial and shall ensure that the parties are treated with equality and that each party is given reasonable opportunity to present its case.

(2) The case shall be governed by the Rules and, where the Rules are silent, by any other rules agreed between the parties or, failing that, by rules decided by the DB.

(3) All submissions, documents, expert statements, obtained by a party and produced to the DB by one party shall be communicated to the other party and to the Secretariat. Expert opinions and evidentiary documents received by the DB directly from third parties shall also be communicated to the parties.

(4) Upon the request of a party, the DB may make decisions concerning the confidentiality of the proceedings or of any other matters in connection with the case and take measures to protect trade secrets and other confidential information.

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Article 12

(1) The DB shall as soon as possible convene the parties for an opening meeting. The meeting may be held by the use of telecommunication. At the meeting the further course will be organized, and in the notice convening the meeting, the DB shall set out the issues of special importance to be addressed at the meeting, such as:

- a) A presentation of the parties' contract and the status of its performance,
- b) The procedure and frequency of progress reports from the parties to the DB regarding the performance of the contract, any disputes arising thereof, etc.
- c) The need for, and if applicable, determination of date, time and location for regular meetings and site visits,
- d) Possible procedures to followed regarding the DB's resolution of disputes through informal assistance, cf. Article 1 (3), cf. Article 13.
- e) Time limits for the exchange of any written submissions in respect of dispute, cf. Articles 15 and 16 and, if applicable, any other matters relating to handling of disputes in accordance with Articles 14-19, and
- f) A budget for costs related to the DB's work including, among others, establishing the principles for remuneration of the DB members in connection with the in Articles 13-19 mentioned work and payment thereof and if the parties shall provide a deposit and if so, how.

(2) The parties shall fully comply with requests from the DB and may jointly or separately provide information following the agreed procedure in such a way that the DB is able to follow the performance of the contract.

Article 13

(1) Upon the request of any party, the DB may, at any time during meetings, site visits etc., informally assist the Parties in resolving any disagreements that may arise during the performance of the contract. The parties shall not be bound by the views given by the DB in the course of its informal assistance. The DB, if called upon to settle a dispute (cf. Articles 14-19) with respect to which it has provided informal assistance, shall not be bound by any of the above-mentioned views.

Article 14

(1) A party, requesting the DB's assistance, cf. Article 1 (2) shall submit a written request to the DB, with a copy to the other party and the Secretariat.

(2) The request shall as a minimum contain:

- a) A short, concise and neutral description of the dispute,

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- b) A presentation of the referring party's position on the request including the questions the DB must deal with,
- c) An indication of what the party wants the DB's decision to be, including if the case shall result in a non-binding recommendation or a binding decision , cf. Article 1 (2) (a) and (b), and
- d) A reference to the documents, statements and other evidence on which the party relies.

Article 15

(1) The other party may file a response within a deadline fixed by the DB.

Article 16

- (1) The DB may request the parties to submit additional written submissions or additional documentation.
- (2) The DB may, after hearing the parties, obtain additional information or perform further inquiries, site visits etc.
- (3) Unless the parties agree otherwise, the dispute shall be decided following an oral hearing which the DB convenes. The hearing shall take place as soon as possible after the DB has received any response, cf. Article 15. Unless otherwise agreed between the parties, the oral hearing shall be held, where the DB, after an overall assessment, finds it most appropriate.
- (4) If, without showing good cause, a party fails to appear at a meeting, including an oral hearing, or to produce documentary evidence, the DB may continue the proceedings and decide on the evidence before it. The same applies if a party, without reasonable cause, fails to file a timely response, cf. Article 15.
- (5) Unless the parties have agreed otherwise, meetings, including the oral hearing shall be held in camera.
- (6) The DB shall prepare minutes of meetings held, stating the time and place of the meeting, the participants of the meeting, and the decisions made at the meeting. These minutes shall be forwarded to the parties and the Secretariat.

Article 17

- (1) The DB shall settle the disputes in accordance with the law chosen by the parties as applicable to the raised questions. Failing a designation by the parties, the DB shall apply the rules of law which it finds most appropriate after having invited the parties to comment.
- (2) The DB shall in any case decide the raised questions in accordance with the provisions of the contract and with due regard to the usages of the trade applicable to the case.

Article 18

- (1) The decision by the DB shall, as far as possible, be made in direct connection with the parties having had the opportunity to present their views, possibly during an oral hearing. If a decision has not been made

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within 7 calendar days hereafter, the DB shall notify the parties and the Secretariat of the time when the decision may be expected.

(2) The Decision shall be dated and as a minimum be signed by the President of the DB and shall state the reasons on which it is based, unless the parties have agreed that it shall not be reasoned. Unless the parties have agreed otherwise, the Decision shall also include:

- a) A presentation of the facts of the case, including the claims made by the parties and, to the extent necessary, a rendition of the testimonies made by parties and witnesses.
- b) Information on who has appeared at a possible oral hearing, relevant site visits etc., including whether a party, without showing good cause, failed to appear or proved unwilling to provide further evidence,
- c) A description of the relevant provisions of the parties' contract,
- d) A description of the case progress,
- e) A list of the documents which are relevant in this part of the case, and
- f) The allocation of the costs of the DB members in any other way than provided for in Article 21, if this due to special circumstances is found to be reasonable.

(3) Where the DB is composed of more than one member, the Decision shall be given by a majority decision. If there is no majority, the President of the DB shall have the casting vote. A member who finds himself or herself to be in a minority regarding the reasons given and/or the outcome shall be entitled to have his or her vote noted in the Decision.

Article 19

(1) Within 14 calendar days of receiving the Decision a party may request the DB to:

- a) Correct a decision where, due to clerical errors, misprint or other similar errors, the contents of the decision is not in accordance with the intention of the DB,
- b) Interpretate the decision, or
- c) Make an additional decision with regard to circumstances which by mistake were not included in the decision.

(2) A request for correction to or an interpretation of a Decision or for the making of an additional decision shall be sent to the DB and to the other party with a copy to the Secretariat. The DB shall decide on the matter after having invited the other party to comment.

(3) The DB may correct any error of the kind referred to in (1) (a) on its own motion within 14 calendar days of the date of the decision, after having invited the parties to comment.

(4) Under special circumstances the DB may extend the deadlines stated in (1) and (3) above.

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(5) The provision in Article 18 shall also apply to decisions to correct or to interpret the decision as well as well as to an additional decision.

Article 20

(1) The DB's decisions and non-binding recommendations in accordance with Article 1 (2) and (3) cannot be submitted in any future subsequent litigation or arbitration unless the parties agree otherwise or unless the decisions are binding cf. Article 1 (2) (b).

Article 21

(1) Unless the parties agree otherwise or the DB has decided otherwise as provided in Article 18 (2) (f), the parties shall equally bear the costs of the members of the DB, including fees and costs, which are related to the case, as well as the DIA, including the registration fee, the charge and expenses, which are related to the case.

(2) The parties shall be jointly and severally liable for the total costs of the case. If this means that one party has to pay for the other party, the former shall have a right of recourse against the latter.

Article 22

(1) Remuneration of the DB members may be paid regularly as the work is completed, for example on a monthly basis, unless otherwise agreed, cf. Article 12 (1) (f). All payments are subject to confirmation by the Chairman's Committee on the basis of a reasoned written proposal made by the President of the DB setting out the size of the fee and its allocation to the DB members. The Chairman's Committee may fix the fee at a level below than what follows from the written proposal if the remuneration is not in accordance with the remuneration principles agreed between the parties and the DB, cf. Article 12 (1) (f) or if the fee, taking all circumstances into consideration, in the opinion of the Chairman's Committee seems unreasonable.

(2) Amounts payable to a DB member do not include any possible value added tax (VAT) or other taxes or charges that may be and imposts applicable to the DB member's fees. Parties have a duty to pay any such taxes or charges; however, the recovery of any such charges or taxes is a matter solely between each DB member and the parties.

(3) The DIA's charge is fixed by the Chairman's Committee. The charge shall be reasonable and should reflect the work of the DIA and other related circumstances regarding the case. The charge shall be based on the scale for the calculation of the DIA's administrative charge which can be found in Exhibit 1 of the Rules of Arbitration Procedure (2013).

Article 23

(1) Any communication from DIA, the DB or the parties shall be deemed to have been validly received by a party when forwarded to a party's address or last known address by registered mail, e-mail or any other means of communication that provides a record of the sending thereof, or if proven to have reached the party.

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Article 24

(1) The DB members, the members of the Board or the Board of Representatives, the Chairman's Committee, the Secretariat and the Secretary General of DIA shall treat all matters relating to the case as confidential. Notwithstanding the 1st sentence, the decisions of the Chairman's Committee, cf. Article 8 (2) may be published in an anonymous form.

(2) The DB members, persons appointed by the DB, members of the Board or the Board of Representatives, the Chairman's Committee, the Secretariat or the Secretary General cannot be called by a party as a witness in connection with a case with the ordinary courts or in an arbitration regarding the dispute, unless otherwise agreed by the parties.

Article 25

(1) The members of the DB, persons appointed by the DB, members of the Board or the Board of Representatives, the Chairman's Committee, the Secretariat or the Secretary General shall not be liable for any act or omission in connection with the initiation of the case, proceedings or Decisions rendered by the DB, except to the extent such limitation of liability is prohibited by applicable law.