

The DIS and the 2018 Arbitration Rules

AHK / DIS: Arbitration in Russia and Germany
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James Menz, J.D.

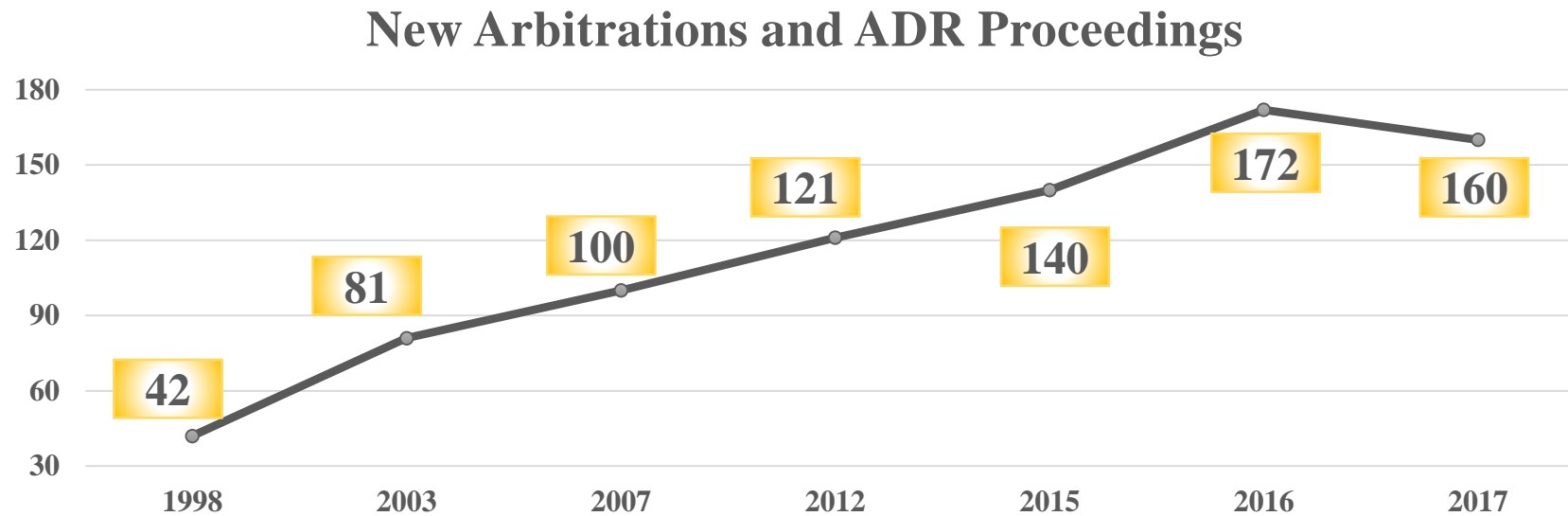
Deputy Secretary General & Head of Case Management

The German Arbitration Institute



Statistics

- 250 cases pending



- Amounts in dispute from € 5.000 € to € 270 M; aggregate ~ € 1 B.
- ~65% of cases are domestic, ~35% international

Ambition

- Update after 20 years
- One set of rules for domestic and international arbitrations
- Two equally authoritative languages
- Modern, innovative, but do not follow every fashion
- Emphasize German/civil law elements and make them attractive
- Broad-based reform effort
 - 3 committees
 - 300+ individuals
 - Private practitioners, in-house counsel, academics
 - Hundreds of pages of proposals/suggestions
 - Civil and common law drafting groups

The DIS Arbitration Council

- New body in addition to Appointing Committee
- Shift of certain administrative powers from tribunal to DIS
- Enhances integrity and predictability
- Leading German and international arbitration practitioners
- Main powers
 - Challenges and removal of arbitrators (Arts. 15.4 & 16.2)
 - Fixing the arbitrator fees after early termination (Art. 34.4)
 - Deciding disputes over the amount in dispute (Art. 36.3)
 - Deciding on increases (due to complexity, Schedule 2) and decreases (due to delayed award, Art. 37) of arbitrator fees

More speed at the front-end and the back-end

- Shorter deadlines for nomination (30 → 21 days) (Arts. 7.1 & 12.2)
- New deadline for Answer (45 days) and (hortatory) counterclaim (Arts. 7.2 & 7.5)
- Softening of default rule for number of arbitrators (Art. 10.2)
- 3-month deadline for final award (Art. 37)
- Quick „scrutiny-light“(Art. 39.3)

Efficiency and proactive case management

- Efficiency as the „lode-star“ (Art. 27.1)
 - Tribunal may take into account in costs decisions (Art. 33.3)
 - DIS may take into account in setting arbitrator fees (Art. 37.4)
- Article 27 as a toolbox
 - Case Management Conference (21 days)
 - „Mandatory agenda“
 - Must discuss: Annex 3-measures (tribunal can order absent party agreement), expedited proceedings, ADR, use of experts
 - In-house counsel to attend (user buy-in)
- All-electronic communication (Art. 4.1)

Solutions for a complex world

- Multi-party, multi-contract, joinder, and consolidation provisions
- Conservative approach
 - No overriding efficiency considerations
 - Consent-based
 - No institutional *prima facie* decisions (one wrinkle, multiple arbitration agreements, Article 17.3)
 - If no explicit agreement, the arbitral tribunal reviews the existence and the scope of any consent
- More flexible solution for failure to appoint an arbitrator by one side in multi-party arbitrations (Art. 20.3)

Civil law elements: early dispute resolution

- Dispute management (Art. 2.2)
 - Help the parties find the dispute resolution mechanism best suited for their dispute
 - Before or during arbitration
- Discussing mediation and ADR early on (Art. 27.4)
- Provisional assessments as one of the Annex 3-measures
- Encouraging amicable settlements at every stage of the case (Art. 26)
- Turning a mediated settlement or other ADR-agreement or decision into a consent award (Art. 41.2)

If one party does not want any of this, it will not be imposed!

What doesn't change?

- What was not done?
 - Emergency Arbitrator (but stay tuned)
 - AID-based expedited proceedings
 - Summary judgment
 - Formalized Arb-Med-Arb (but see dispute management)
- What does not change?
 - Arbitrator fees remain low and internationally very competitive (lower third tier), fees were reduced even further for amounts in dispute <100,000 €
 - Light-touch, non-bureaucratic administration

Thank you for your attention!

James Menz, J.D.

DIS | DEPUTY SECRETARY GENERAL / HEAD OF CASE MANAGEMENT

D +49 221 28552444

German Arbitration Institute

Lennéstr. 9 | D-10785 Berlin | T +49 30 417070700 | F +49 30 417070707

Beethovenstr. 5-13 | D-50674 Köln | T +49 221 285520 | F +49 221 28552222

www.disarb.org

The DIS recommends the following arbitration clause:

"All disputes arising out of or in connection with this contract or its validity shall be finally settled according to the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law."