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# The Need for Speed in International Arbitration

## *Supplementary Rules for Expedited Proceedings of the German Institution of Arbitration (DIS)*

Klaus Peter BERGER\*

*On April 25, 2008, the German Institution of Arbitration (DIS) presented the new Supplementary Rules for Expedited Proceedings. The new Rules allow parties and arbitrators to conduct an arbitration within six months (sole arbitrator) or nine months (three-member tribunal). To achieve this goal, the time limits provided for in the DIS Arbitration Rules 1998 for the nomination of arbitrators are shortened, four-week deadlines for the submission of briefs are fixed in the Supplementary Rules and the common interest of the parties in the expedition of the arbitration becomes a guiding maxim for the exercise of the tribunal's procedural discretion. Also, the arbitral tribunal is expected to establish at the outset of the proceedings a procedural timetable and to identify to the parties at an early stage of the proceedings the issues that it regards as relevant and material to the outcome of the case.*

### I. INTRODUCTION

Much has been said and written about “the need for speed” in international arbitration: the necessity to expedite arbitration proceedings.<sup>1</sup> While in previous decades, it was the length of proceedings before state courts which led parties to consider dispute settlement through arbitration as an attractive alternative, the picture has changed in recent years. Today, users increasingly consider the length of arbitral proceedings as a disadvantage of arbitration as an effective means of dispute resolution. Users of the arbitral process argue that prolonged and expensive dispute resolution procedures are often tantamount to a “scorched earth” policy.<sup>2</sup> To a certain extent, arbitration has fallen victim to its own success. Arbitration lends itself much more to the resolution of complex cross-border business disputes than court proceedings, but complexity necessarily leads to lengthy and

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<sup>1</sup> Cf. M. McIlwrath & R. Schroeder, *The View from an International Arbitration Customer: In Dire Need of Early Resolution*, 74 ARBITRATION 3, 4 (2008) (“There is no need to explain why businessmen like speed, are impatient with delay, and abhor unnecessary cost”) and *id.* at 10 (“frustration with the length and expense of the arbitration process is increasingly cited as the rationale for favouring court resolution (or at least for no longer favouring arbitration)”); R. Fiebinger & C. Gregorich, *Arbitration on Acid: Fast-Track Arbitration in Austria from a Practical Perspective*, AUSTRIAN ARB. Y.B. 237 (2008); G. KAUFMANN-KOHLER, ARBITRATION AT THE OLYMPICS: ISSUES OF FAST-TRACK DISPUTE RESOLUTION AND SPORTS LAW 30 (2001) (“In traditional commercial arbitration, there is much talk about speed: speed and justice—speed versus justice—speed versus quality—speed versus freedom and flexibility, to name just a few of the concerns raised in recent debates”); see also the discussion of the “users” of arbitration during the Sixth Petersberger Schiedstage (Arbitration Conference) on March 1, 2008, L. Kleine, *Die Schiedsgerichtsbarkeit aus Sicht ihrer Nutzer*, SCHIEDSVZ 145 (2008).

<sup>2</sup> P. Hobeck, V. Mahnken & M. Koebeke, *Time for Woolf Reforms in International Construction Arbitration*, INT’L A.L.R. 84, 86 (2008).

more costly proceedings.<sup>3</sup> It is argued that the failure of arbitral tribunals to conduct arbitrations expeditiously and efficiently can often lead the parties to settle their dispute, not because they believe their case is strong or weak but because they have become frustrated with the arbitration process, especially its length and the costs involved.<sup>4</sup> Also, senior management is becoming more critical with respect to the costs and time involved in an international arbitration:

[W]hen businesses pay for private adjudication, they rightly expect speed and efficiency from the process, just as they expect these qualities from other service providers ... [R]ealistically, [however,] it is difficult to comfortably predict an arbitration of any commercial complexity ending in fewer than two or three years ... a time frame ... [which] is simply too long, particularly for a private process ... in which any right to appeal is largely given up ... While business leaders also expect a fair resolution, taking excessive time can often be just as damaging as a wrong decision.<sup>5</sup>

To address this problem, the recent Report of the ICC Commission on Arbitration (*Techniques for Controlling Time and Costs in Arbitration*)<sup>6</sup> (“the Report”) expressly recommends that the parties give consideration to setting out fast-track procedures in their arbitration clause. At the same time, however, the Report notes that experience shows that in actual practice, it is difficult at the time of drafting the arbitration clause to predict with a reasonable degree of certainty the nature of possible disputes and the fast-track procedures that will be suitable for those disputes.<sup>7</sup> Once the dispute has arisen, it will often be difficult for the parties to agree on anything, let alone on tailor-made fast-track arbitration rules. This is the *raison d’être* for institutional fast-track rules.<sup>8</sup> The parties can agree on them easily and without much discussion because they have already agreed on the general arbitration rules of the same arbitral institution.

A number of arbitral institutions have reacted to these concerns and have issued fast-track rules. In April 2008, the DIS issued the most modern set of institutional fast-track rules, the Supplementary Rules for Expedited Proceedings (SREP).<sup>9</sup>

## II. DRAFTING HISTORY AND REGULATORY PHILOSOPHY

### A. DIS WORKING GROUP “MODEL CLAUSES”

The SREP were drafted by the DIS working group “Model Clauses.” The inaugural meeting of that group took place in Cologne on December 12, 2005. At the outset of

<sup>3</sup> A. REDFERN & M. HUNTER, *LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION* paras. 6–43 (4th ed. 2004).

<sup>4</sup> McIlwrath & Schroeder, *supra* note 1, at 6 (“justice delayed is justice denied”).

<sup>5</sup> *Id.* at 5.

<sup>6</sup> REPORT FROM THE ICC COMMISSION ON ARBITRATION, *TECHNIQUES FOR CONTROLLING TIME AND COSTS IN ARBITRATION* (ICC Publication No. 843, 2007).

<sup>7</sup> *Id.* at 15.

<sup>8</sup> See FOUCHARD, GAILLARD, GOLDMAN ON INTERNATIONAL COMMERCIAL ARBITRATION para. 1248 (E. Gaillard & J. Savage eds., 1999) (“The development of such procedures is welcome because they depart from the traditional image of arbitration as a process which is often less rapid than one might wish for. They reflect the tendency to accelerate resolution of business disputes and the need for increased certainty.”).

<sup>9</sup> See the appendix to this article for the full text of the SREP.

the group's deliberations, two possible areas of activities were identified: model clauses for special types of arbitral proceedings and model clauses intended to regulate certain aspects of standard arbitration proceedings. The working group decided to start with expedited proceedings. That topic seems to stand between the two categories of tasks just mentioned. However, while the term "fast-track" may imply a distinct system of arbitration, it is in fact merely an accelerated standard arbitration procedure in which "time is of the essence."<sup>10</sup> The dominance of the time element in these proceedings simply requires that the standard institutional arbitration rules be supplemented with some extra provisions. Parallel to this work, the members of the group also began to draft a model clause for intra-corporate disputes,<sup>11</sup> a multi-tier clause<sup>12</sup> and a commentary of the standard DIS model clause. The group assigned the task of drafting the SREP to the author of this article. The various drafts were discussed extensively and redrafted by the members of the working group. The final version of the SREP was presented at the DIS Spring Meeting in Munich on April 25, 2008.

## B. BASIC POLICY DECISION BY THE DIS WORKING GROUP

Very early in their deliberations, the members of the DIS working group made a number of important policy decisions relating to the underlying philosophy of the new SREP and the drafting process. The significance of these policy considerations goes well beyond the drafting of the SREP. They provide useful guidance for any arbitral institution which considers drafting fast-track arbitration rules.

### 1. *Special, Detailed Set of Rules for Expedited Proceedings*

Agreement was reached at the outset of the deliberations of the working group that the goal was not to formulate a rather rudimentary fast-track provision such as Article 32 of the ICC Arbitration Rules. That provision simply states that the parties may shorten the various time limits set out in the ICC Arbitration Rules and that such a party agreement concluded after the constitution of the arbitral tribunal becomes effective only with the approval of the tribunal. The first part of that provision is declaratory in nature because the authority of the parties to modify the time limits set out in the ICC Arbitration Rules follows from the notion of party autonomy as the "Magna Carta" of the arbitral process. The second part of the provision contains an important indication of the fact that any modification of time limits agreed upon by the parties while the arbitration is running and after the tribunal has been constituted necessarily affects the position of the

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<sup>10</sup> See REDFERN & HUNTER, *supra* note 3, paras. 6-43; see for the notion of "time is of the essence" as a general principle of transnational contract law CENTRAL'S TRANSNATIONAL LAW DIGEST & BIBLIOGRAPHY, available at <[www.tldb.net](http://www.tldb.net), Principle IV.5.5>.

<sup>11</sup> See for this (multiparty) issue under German law BGHZ 132, 278; W. Kühn, *Arbitration and Corporate Law*, in *LAW OF INTERNATIONAL BUSINESS AND DISPUTE SETTLEMENT IN THE 21ST CENTURY: LIBER AMICORUM KARL-HEINZ BÖCKSTIEGEL* 443 (R. Briner et al. eds., 2001).

<sup>12</sup> On this issue, see K.P. Berger, *Law and Practice of Escalation Clauses*, 22 *ARB. INT'L* 1 (2006).

members of the arbitral tribunal who, when they accepted to act as arbitrators in that case, were acting under the assumption that they would have to deal with a standard and not an expedited timetable. Issues of availability and workload which any arbitrator typically takes (or should take) into consideration when deciding whether to accept or to refuse to act as arbitrator in a given case, appear in a completely different light when the arbitrator is suddenly faced with shortened time limits and an accelerated schedule for the arbitration. The arbitral tribunal must therefore have a veto right or, as *ultima ratio*, the right to withdraw if the parties insist on the conduct of the arbitration on the basis of the shorted time limits.

Thus, Article 32 of the ICC Arbitration Rules sends a clear message to the drafters of fast-track arbitration rules: it is of utmost importance for the success of any set of fast-track rules to make it clear for parties and arbitrators alike at the very outset of the proceedings how “fast” the track will really be. A further problem with Article 32 of the ICC Arbitration Rules perceived by the members of the DIS working group is that it does not spell out any further details of such a fast-track arbitration. While it was obvious to the members of the DIS working group that shortening of time limits is necessarily an essential element of any set of fast-track rules, it was equally clear that the new set of rules should not be limited to a mere shortening of the time limits set out in the DIS Arbitration Rules 1998. Rather, the new rules should indicate clearly the time frame of a fast-track arbitration envisaged by the rules and further details of the expedited arbitral proceedings. The DIS working group decided to seek guidance for this more detail-oriented approach from Article 42 of the Swiss Rules<sup>13</sup> which provides detailed regulations on the conduct of expedited proceedings under the Rules.<sup>14</sup> However, it was agreed upon in the DIS working group that the new rules should not follow the model of Article 42(2) of the Swiss Rules and provide for an automatic application in cases where a certain amount in dispute is not exceeded (1 million Swiss francs). The DIS working group decided to leave the decision whether to apply the new rules or not entirely to an agreement of the parties, thereby relying on party autonomy rather than on a decision made for the parties by the DIS itself.

## 2. *Annex to DIS Arbitration Rules 1998*

It was also agreed very early during the deliberations of the DIS working group that the new SREP should be drafted and published as an annex to the DIS Arbitration Rules 1998 (“DIS Rules”).<sup>15</sup> That annex should display only those provisions which modify the DIS Rules. The clear intention of the working group was to supplement the DIS Rules,

<sup>13</sup> Text in several languages available at <[www.sccam.org/sa/en/rules.php](http://www.sccam.org/sa/en/rules.php)>.

<sup>14</sup> See M. Scherer, *Acceleration of Arbitration Proceedings—The Swiss Way: The Expedited Procedure under the Swiss Rules of International Arbitration*, SCHIEDSVZ 229 (2005).

<sup>15</sup> Text of the DIS Arbitration Rules available at <[www.dis-arb.de/scho/schiedsvereinbarung98-e.html](http://www.dis-arb.de/scho/schiedsvereinbarung98-e.html)>; for the DIS Arbitration Rules, see also K.-H. BÖCKSTIEGEL, S. KRÖLL & P. NACIMIENTO, *ARBITRATION IN GERMANY, THE MODEL LAW IN PRACTICE* 655 (2007); K. Sachs & T. Lörcher, *Taktik in M&A-Schiedsverfahren*, in *TAKTIK IM SCHIEDSVERFAHREN* 153, 170 (T. von Bodungen, W. Eberl, R. Geimer et al. eds., 2008).

not to replace them with a complete set of new rules to be applied in fast-track scenarios. The working group wanted to avoid the impression of a completely new and separate set of arbitration rules for fast-track proceedings. In the interests of user-friendliness and clarity of the new SREP and their interaction with the standard DIS Rules, the group decided not to follow the approach taken by the World Intellectual Property Organization (WIPO). The WIPO Expedited Arbitration Rules which entered into force in October 2002<sup>16</sup> consist of the complete set of the WIPO Arbitration Rules into which certain modifications for the conduct of expedited proceedings have been integrated. The user of the new SREP is in a position to realize immediately where and to what extent the SREP deviate from the standard DIS Rules.

### 3. *Agreement on Application only Prior to Commencement of Arbitration*

The members of the DIS working group were also in agreement that the parties should be able to agree on the application of the new rules only *prior* to the commencement of the arbitration, but not while the arbitration is under way. This approach was intended to avoid possible uncertainties that might arise in cases where the deadlines set out in the standard DIS Rules had started to run and after the parties agreement on the application of the SREP. This approach also avoids questions concerning whether the running of those deadlines should be counted against the shorter deadlines contained in the SREP. At the same time, this approach helps to meet the concerns mentioned above<sup>17</sup> that any agreement of the parties to expedite their arbitration made after the constitution of the arbitral tribunal has a considerable impact on the position of the arbitrators. The problem remains, however, that the parties have the authority to modify the time limits set out in the SREP.

### 4. *No Achievement of Speed at All Costs*

Finally, a basic premise for the members of the DIS working group when drafting the new SREP was to achieve a fair balance between thoroughness of the tribunal's decision-making and expedition of the arbitration proceedings.<sup>18</sup> The goal was not to achieve speed at any cost.<sup>19</sup> On the other hand, however, all options for the expedition of arbitral proceedings were considered and evaluated by the working group and, in the case of a positive evaluation process, implemented in the new Rules. It was primarily

<sup>16</sup> For the full text of the WIPO Expedited Arbitration Rules, see WIPO ARBITRATION AND MEDIATION RULES, WIPO Publ'n No. 446 53 (WIPO Arbitration and Mediation Center ed.).

<sup>17</sup> See *supra*.

<sup>18</sup> Cf. M. Rubino-Sammartano, *The Time Element in Arbitration*, in LIBER AMICORUM IN HONOUR OF OTTO SANDROCK 801, 802 (K.P. Berger ed., 2000) ("It does not ... seem reasonable to take position *a priori* against quickness and in favour of slowness. The notion of rush is equally a negative element. A decision made in a rush is rarely a good decision and this rule could not be changed by the French saying 'jouez mal mais jouez vite.' A balanced solution in general, and in particular in arbitral proceedings, will be to avoid on the one hand slowness and on the other hand rush and proceed quickly.")

<sup>19</sup> On this point, see Scherer, *supra* note 14, at 230 ("speed is not a goal in itself").



through this balanced drafting approach that the members of the DIS working group intended to meet the concerns<sup>20</sup> raised by users against the increasing length of arbitration proceedings.

### III. CONTENT

The SREP consists of seven paragraphs. The Preface and section 1.1 SREP clarify that the DIS Rules remain applicable to proceedings conducted under the Supplementary Rules to the extent that the SREP do not contain more specific provisions. The parties may agree on the application of the SREP in their arbitration agreement<sup>21</sup> or prior to filing a statement of claim, which, in this case, must be filed with the DIS Main Secretariat in Cologne.

#### A. STANDARD DURATION OF FAST-TRACK ARBITRATION; CONSTITUTION OF THE TRIBUNAL; SHORTENING OF TIME LIMITS

A core provision of the new SREP is section 1.2. It provides that the duration of arbitral proceedings conducted under these rules should be no longer than six months (in the case of a sole arbitrator) or nine months (in the case of a three-member tribunal) after the filing of the statement of claim. The six-month deadline is the general rule. In deviation from section 3 of the DIS Rules, section 3.1 SREP provides that the dispute shall be decided by a sole arbitrator, unless the parties have agreed prior to the filing of the statement of claim that the dispute shall be decided by a three-member tribunal. Article 42(1)(d) of the Swiss Rules provides in a more general manner that expedited proceedings should last no longer than six months. Pursuant to Article 42(2)(b) of the Swiss Rules, the dispute shall be decided by a sole arbitrator where the amount in dispute does not exceed 1 million Swiss francs. The rule adopted in the SREP is not connected to the amount in dispute and avoids any doubts that may rise with respect to the determination of that amount.<sup>22</sup> The Rules for Expedited Arbitrations of the Stockholm Chamber of Commerce of January 1, 2007<sup>23</sup> provide in their Article 36 that the arbitral award shall be rendered within three months after the case has been presented to the arbitral tribunal. However, practice shows that in approximately 50 per cent of the cases the award is actually rendered within four to six months.<sup>24</sup>

<sup>20</sup> Cf. Hobeck, Mahnken & Koebke, *supra* note 2, at 87 (“A company having to choose between a highly detailed and well founded decision from a neutral third party in the course of prolonged and costly proceedings and a less perfectionist but still well argued decision in less costly and lengthy proceedings of a more summary nature will frequently opt for the second of these two alternatives.”).

<sup>21</sup> The DIS recommends the following model clause: “All disputes arising in connection with the contract [description of the contract] or its validity shall be finally settled according to the Arbitration Rules and the Supplementary Rules for Expedited Proceedings of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law.”

<sup>22</sup> Cf. Scherer, *supra* note 14, at 232 et seq.

<sup>23</sup> Text available at <[www.sccinstitute.com/uk/Rules/](http://www.sccinstitute.com/uk/Rules/)>.

<sup>24</sup> Cf. Presentation of SCC Fast-track Arbitration in Istanbul, Turkey, available at <[www.sccinstitute.com/\\_upload/shared\\_files/artikelarkiv/fast\\_track\\_arbitration\\_istanbul.pdf](http://www.sccinstitute.com/_upload/shared_files/artikelarkiv/fast_track_arbitration_istanbul.pdf)>.

Apart from the payment of the advances for costs by the parties,<sup>25</sup> it is the phase of the constitution of the tribunal which contains a major potential for delay of the proceedings.<sup>26</sup> For that reason, the SREP contains specific modifications of the appointment mechanism of the DIS Rules which are intended to ensure the expedition of the proceedings.

If the parties have agreed on the individual who is to act as sole arbitrator prior to the filing of the statement of claim, the claimant must nominate the arbitrator in its statement of claim. In the absence of such agreement, section 3.2 SREP provides that the Appointing Committee of the DIS shall appoint the sole arbitrator without undue delay upon request by one of the parties. Such request may be made together with the statement of claim. Until such request is received by the DIS Main Secretariat, a joint nomination of the sole arbitrator by the parties will be permissible.

If, however, the parties have agreed on a three-member tribunal, the respondent's time limit to nominate an arbitrator is shortened from thirty days (section 12.1 of the DIS Rules) to fourteen days from the receipt of the statement of claim by the respondent. If the respondent fails to nominate an arbitrator within this time limit, the claimant may request nomination by the Appointing Committee of the DIS. The chairman of the arbitral tribunal will be appointed in accordance with the procedure provided for in section 12.2 of the DIS Rules, subject to a shortening of the time limit mentioned therein from thirty to fourteen days. Section 3.4 SREP provides that if the appointment of a party-nominated arbitrator or the chairman cannot be confirmed within seven days of receipt of the request to submit his declaration of independence and impartiality pursuant to section 16.1 of the DIS Rules, the Appointing Committee of the DIS shall nominate a substitute arbitrator. This latter provision is intended to avoid situations in which the tardy approach of a nominee or his temporary unavailability threatens to torpedo the accelerated schedule of the expedited proceedings even before the tribunal has been constituted.

## B. SCHEDULE OF THE ARBITRATION

In order to ensure and safeguard the basic goal of the SREP, i.e., the termination of the arbitration within the six-month (rule) or nine-month (exception) time limit set out in section 1.2 SREP, the new rules aim not only at the expedition of the constitution of the tribunal but also at a significant acceleration of the schedule of the arbitration.

While section 9 of the DIS Rules leaves it to the discretion of the arbitral tribunal to set a deadline for the respondent to submit its statement of defence, that deadline is fixed in the new rules for expedited proceedings. Section 4.2 SREP provides that the statement of

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<sup>25</sup> Section 2 SREP provides that in deviation from DIS Rules, s.7.1 as read with No. 17 of the Appendix to DIS Arbitration Rules, s.40.5, the advance to be paid by the claimant upon filing the statement of claim shall cover the full amount of the arbitrators' fees. This rule is intended to avoid the potential loss of time caused by a delayed payment of the respondent's share of the advance on costs.

<sup>26</sup> Cf. C. Borris, *Streiterledigung bei (MAC-)Klauseln in Unternehmenskaufverträgen: ein Fall für "Fast-Track"-Schiedsverfahren*, B.B. 294, 296 (2008); see also Fiebinger & Gregorich, *supra* note 1, at 249 ("Ultimately, the process of selecting a tribunal took almost a year—four times as long as the actual arbitration").

defence shall be filed by the respondent within four weeks of receipt of the statement of claim pursuant to section 8 of the DIS Rules. Further written submissions by the parties are to be filed within four weeks of receipt of the other party's submission, unless the tribunal determines otherwise. The oral hearing (which may of course last more than one day) must be held at the latest four weeks after receipt of the final written submission. The arbitral award must be rendered at the latest four weeks after the closing of the oral hearing.

There may be cases where it appears appropriate to modify the schedule for expedited proceedings laid out in the SREP. This may be true for both longer and shorter proceedings.

Section 6.1 SREP provides that the provisions and time limits contained in the SREP may be modified by agreement between the parties. After the constitution of the arbitral tribunal, any modification will require the consent of the arbitral tribunal. This rule concerns primarily scenarios in which the parties agree to further shorten the already tightened time limits set out in the SREP. As indicated above, such agreements directly affect the position of the members of the arbitral tribunal. Upon their appointment, they have accepted the accelerated schedule set out in the SREP.<sup>27</sup> In case of an agreement by the parties to further shorten the schedule of the expedited arbitration, the arbitrators must have the right to veto any further expedition of the proceedings which was not foreseeable by them at the moment of their appointment. In such scenarios, each member of the arbitral tribunal must have the right to terminate the arbitrator's contract (*receptum arbitri*) which he or she has concluded with the parties of the arbitration.

Section 6.1 SREP provides a solution for the converse scenario in which the arbitral tribunal intends to extend the time limit set out in the new Rules without consent of all parties. In such a case, the arbitral tribunal may extend a time limit contained in the SREP only for good cause, such as serious illness, death or unavailability for compelling reasons<sup>28</sup> of an arbitrator or obvious delaying tactics by one party which are clearly against the spirit enshrined in the SREP.<sup>29</sup> The extension must be effected by an order in writing, which must state the reasons for the extension and be transmitted to the parties and the DIS Main Secretariat. The inherent purpose of that provision is to prevent a tribunal acting under the SREP from "converting" an expedited arbitration into a regular arbitration for reasons that are contrary to the underlying spirit of the new Rules, e.g., merely because of the increased workload of some or all members of the arbitral tribunal.

Section 6.2 SREP aims in the same direction. It provides that if the arbitral proceedings cannot be concluded within the six or nine-month time frame set forth in section 1.2 SREP, the arbitral tribunal will inform the DIS Main Secretariat and the parties of the reasons in writing. At the same time, that provision clarifies that the competence of

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<sup>27</sup> Cf. *infra* note 42.

<sup>28</sup> Cf. Borris, *supra* note 26, at 297.

<sup>29</sup> Cf. A.J. van den Berg, *The WIPO Expedited Arbitration Rules: Fast-Track Arbitration*, available at <[www.wipo.int/amc/en/events/conferences/1995/denberg2.html](http://www.wipo.int/amc/en/events/conferences/1995/denberg2.html)> ("All kinds of things may happen in your fast-track arbitration: ... a co-arbitrator may be uncooperative; a party may be uncooperative; a party can even blackmail you, knowing that the time limit is running out and then, after expiry of the time limit, you will no longer have the mandate to act as arbitrator. Be sure that you have this power to extend time limits in exceptional circumstances.").

the arbitral tribunal will remain unaffected if these time frames are exceeded. That provision aims at avoiding potential legal problems<sup>30</sup> that may arise in cases in which the tribunal exceeds the time limits set forth in the SREP. Also, inventive parties are deprived of the option to misuse the approaching end of a time limit as a means to exert pressure on the other party and/or the tribunal.<sup>31</sup>

### C. GUIDING PROCEDURAL MAXIMS

The SREP contain a number of guiding procedural maxims which, together with the shortening of time limits provided for therein, are intended to ensure and safeguard the expedition of the arbitral proceedings conducted under those Rules.

#### 1. *Parties' Common Interest to Expedite the Proceedings*

One of those basic guiding principles is contained in section 1.4 SREP. It provides that the arbitral tribunal shall at all times exercise its discretion to determine the procedure under section 24.1 second sentence of the DIS Rules in the light of the parties' interest in expediting the proceedings, as reflected by the parties' agreement to apply the SREP. This principle applies in particular to possible extensions of time limits provided for in the Supplementary Rules. Together with section 6.1 and 6.2 SREP<sup>32</sup> this provision sends a very important signal to parties and arbitrators alike, in that it clarifies that "the need for speed" as the basic premise underlying the SREP is not empty words but that the parties' intent to expedite the proceedings determines all aspects of the arbitration, even the application by the tribunal of those provisions of the DIS Rules which are not modified by the SREP.

#### 2. *Schedule of the Proceedings*

In accordance with the overriding goal to expedite the proceedings, section 5.1 SREP provides that the arbitral tribunal shall, at the outset of the proceedings and in agreement with the parties, establish a schedule to ensure that the arbitral proceedings can be concluded within the six or nine-month time frame. Again, the purpose of that provision is to make sure that parties and arbitrators are forced to make themselves aware at a very early stage of the proceedings of the need to expedite the proceedings and of ways and means to achieve that goal through an efficient structure of the arbitral schedule.<sup>33</sup> With their consent to that schedule prepared by the tribunal, the parties once again indicate that they agree with the conduct of the arbitration in an expedited fashion. Such "informed consent" can help to avoid subsequent allegations of violations of arbitral due

<sup>30</sup> Cf. Scherer, *supra* note 14, at 234 et seq.

<sup>31</sup> For this constellation, see Van den Berg, *supra* note 29.

<sup>32</sup> Cf. *supra*.

<sup>33</sup> Cf. Fiebinger & Gregorich, *supra* note 1, at 251 ("In a fast-track arbitration, time management becomes the most essential thing. Therefore, much more so than in a standard arbitration, it is required to plan ahead very carefully.")

process caused by the shortening of deadlines or other procedural means which are inherent in any expedited arbitration procedure.<sup>34</sup>

### 3. *Two Rounds of Briefs, One Hearing, No Set-Off/Counterclaim*

All other procedural maxims laid down in section 5 SREP are subject to a different determination by the arbitral tribunal. In giving such directions and in exercising its procedural discretion, the tribunal must always take into account the interest of the parties to expedite the proceedings.

The exchange of written submissions is limited to the statement of claim within the meaning of section 6 of the DIS Rules and the statement of defence within the meaning of section 9 of the DIS Rules, as well as one further written submission by each party.

Section 5.2 SREP further provides that only one oral hearing, including any taking of evidence, shall be held. To allow proceedings without a hearing (“DONT = documents only, no talk”)<sup>35</sup> was not considered a sensible option by the DIS working group in view of the necessarily limited time for the presentation of law and facts under the SREP. The working group decided not to modify section 29 of the DIS Rules which requires the tribunal to keep a record of the hearing. The DIS working group thought that such a record might be sensible and necessary in cases where witnesses are heard during the hearing. Also, section 29 of the DIS Rules allows for the production of a summary protocol or for an agreement of the parties that no records shall be produced.

In order to further enhance the expedition of the proceedings, section 4.4 SREP provides that in proceedings under the Supplementary Rules, counterclaims and set-offs shall only be admissible with the consent of all parties and the arbitral tribunal. Also, pursuant to section 5.2 SREP no further written submissions (“post hearing briefs”) shall be exchanged after the closing of the oral hearing. This means that, contrary to modern arbitral practice, the hearing ends with closing statements by the parties, which requires a substantial amount of flexibility from counsel.<sup>36</sup>

### 4. *Early Legal Guidance by the Arbitral Tribunal*

It has been said that in standard arbitrations, the most common complaint of the users involves the relatively straightforward disputes that could easily have been resolved or settled expeditiously if the key issue(s) had been addressed by the tribunal head-on at the beginning of the proceedings.<sup>37</sup> This proactive approach to the determination of the legal issues of the dispute becomes even more important in fast-track arbitrations. For that reason, section 5.3 SREP requires the tribunal, at the earliest possible stage of the proceedings, to identify to the parties and as a rule after each round of written submissions,

<sup>34</sup> Cf. Scherer, *supra* note 14, at 235.

<sup>35</sup> Art. 42(1)(c) of the Swiss Rules of International Arbitration explicitly provides that the parties may agree that the dispute shall be decided on the basis of documentary evidence only.

<sup>36</sup> Cf. Fiebinger & Gregorich, *supra* note 1, at 252.

<sup>37</sup> McIlwrath & Schroeder, *supra* note 1, at 8.

the issues it may regard as relevant and material for the outcome of the case. This formula was adopted from paragraph 3 of the Preamble to the IBA Rules on the Taking of Evidence.<sup>38</sup> The fact that this language is contained in the IBA Rules as “codified” best practice rules makes it clear that, today, this “proactive” approach to conducting an arbitration is acceptable also for lawyers from the common law world. In effect, such “early guidance” from the tribunal is essential for the success of any expedited arbitral proceedings since it may lead to an early focus of the parties on those issues of the dispute which the tribunal considers as key for the resolution of the dispute and may thus help to shorten the parties’ briefs, since relevant and irrelevant issues are separated as early as possible during the expedited proceedings.<sup>39</sup>

#### D. TIME LINE OF AN ARBITRATION CONDUCTED UNDER THE SREP

Based on what has been said so far, a time line can be designed for expedited arbitrations conducted under the SREP. That time line is based on an “ideal case scenario” in which the statement of claim filed with the DIS Main Secretariat is delivered to the respondent pursuant to section 8 of the DIS Rules without undue delay (mail delivery time three days), all further briefs are submitted by e-mail or other means of electronic telecommunication,<sup>40</sup> the constitution of the arbitral tribunal is effected parallel to the running of the deadlines for the submission of further briefs by the parties<sup>41</sup> and the nominees for sole arbitrator/party nominated arbitrator and chairman accept their office without undue delay.<sup>42</sup> Any disruption of this ideal scenario will necessarily lead to a delay and thus to an extension of the time line reproduced below.

X =	Filing of statement of claim with the DIS Main Secretariat in Cologne
X + 3 days =	Receipt of statement of claim by respondent
X + 31 days =	Submission of statement of defence
X + 59 days =	Submission of claimant’s second brief
X + 87 days =	Submission of respondent’s second brief
X + 115 days =	Hearing
X + 143 days =	Award

<sup>38</sup> IBA Rules on the Taking of Evidence in International Commercial Arbitration, 1999, Preamble, para. 3 (“Each Arbitral tribunal is encouraged to identify to the Parties, as soon as it considers it to be appropriate, the issues that it may regard as relevant and material to the outcome of the case, including issues where a preliminary determination may be appropriate”).

<sup>39</sup> Cf. Scherer, *supra* note 14, at 237 (“Get quickly a good grasp of the file and the relevant issues. Give directions on what issues you wish the parties to deal with in their briefs and the hearing.”).

<sup>40</sup> Cf. Fiebinger & Gregorich, *supra* note 1, at 250 (“In a fast-track arbitration, these modern means of communication are not just optional, they are absolutely necessary for completing the procedure within a short time frame.”).

<sup>41</sup> Section 4.1 SREP provides that, before the tribunal is constituted, briefs have to be submitted to the DIS Main Secretariat, while after the constitution of the tribunal (DIS Rules, s.17.3) briefs have to be submitted to the tribunal itself. In any case the briefs also have to be submitted to the other party.

<sup>42</sup> The DIS will inform the nominee(s) that the arbitration will be conducted under the SREP and that the nominee(s) should react without undue delay.

This time line of a little over five months can be further shortened through shortening of deadlines provided for in the SREP and/or the parties' agreement to have only one round of briefs.<sup>43</sup> In the case of a three-member tribunal, the time line will most likely be extended. However, in an ideal case scenario, it should make no difference whether the dispute will be decided by a sole arbitrator or a three-member tribunal. In the latter case, it follows from section 3.3 SREP that the tribunal will be constituted when the four-week deadline for the submission of the respondent's statement of defence set out in section 4.2 SREP expires.

#### E. ARBITRAL AWARD

In the interest of a certain degree of quality control of arbitral decision-making in expedited proceedings, the DIS working group after intensive deliberations finally rejected the idea contained in Article 42(1)(e) of the Swiss Rules which allows the tribunal to give only summary reasons for its decision in the award. A further reason for that decision was the fact that section 34.3 of the DIS Rules provides the tribunal with a certain leeway as to how it wants to give reasons for its decision in the award. Under German law, the standards to be applied to the reasons contained in an arbitral award are less stringent than those that apply to court judgments.<sup>44</sup> Also, section 34.3 of the DIS Rules is subject to a contrary agreement of the parties which implies that the parties may agree that the tribunal need not state any reasons at all in its award (arg. e. section 1054(2) German Code of Civil Procedure) or that only summary reasons will be given in the award.<sup>45</sup>

The DIS working group did, however, see the need for the time constraints caused by the accelerated schedule for the expedited arbitration conducted under the SREP to have an impact on the tribunal's duty to draft the award. Therefore, section 7 SREP provides that, unless the parties have agreed otherwise, the arbitral tribunal may abstain from stating the facts of the case in the arbitral award. This rule takes account of the fact that the drafting of the summary of facts can be a time-consuming part of the overall drafting process.

#### IV. POSSIBLE FIELDS OF APPLICATION

Expedited arbitral proceedings conducted under the SREP are possible and recommended in all those areas in which the interest of the parties in a speedy and final resolution of their dispute outweighs their interest in a decision that takes account of every single tiny detail of their dispute. Ultimately, this is a decision that the parties have to make and that no one can make for them.<sup>46</sup>

<sup>43</sup> See *supra*.

<sup>44</sup> Cf. BGHZ 30, 89; BGHZ 96, 47; BGH RIW 1990, 495; H. RAESCHKE-KESSLER & K.P. BERGER, RECHT UND PRAXIS DES SCHIEDSVERFAHRENS para. 863 (3d ed. 1999).

<sup>45</sup> Cf. Borris, *supra* note 26, at 297.

<sup>46</sup> Cf. Scherer, *supra* note 14, at 230; Borris, *supra* note 26, at 297.

Such a decision in favour of speed could be made in construction disputes where the need to continue with the project requires a quick resolution of disputes.<sup>47</sup> In disputes concerning the termination of a merger and acquisition contract in the period between signing and closing based on a “material adverse change” (MAC) clause,<sup>48</sup> the time pressure inherent in such transactions makes it inevitable for the parties to consider dispute resolution through fast-track arbitration.<sup>49</sup> Also, certain banking and capital markets disputes lend themselves to dispute settlement through fast-track arbitration, at least in b2b-scenarios such as international loan agreements or contracts related to the trading of modern financial instruments like swaps, options or other derivatives. Over the past decades, banks and other financial institutions have argued that disputes arising out of such transactions, which typically involve simple legal questions and no issues of fact that require complex expert reports, do not lend themselves to time-consuming dispute resolution by arbitration. In such cases, the banks argue that the appointment of an arbitral tribunal would not guarantee a speedy resolution of the dispute.<sup>50</sup> The new SREP provide an answer to these concerns. At the same time, the new Rules may be adapted to the circumstances and particularities of the individual case. Thus, inter-bank swap contracts<sup>51</sup> are characterized by the fact that over the life of the contract, payment obligations arise for both sides which are then included in any dispute resolution process by way of set-off or counterclaim. Section 4.4 SREP allows the parties to agree, already in their arbitration agreement, on the admissibility of set-off and counterclaims in expedited proceedings to be conducted under the SREP. In view of such a party agreement, the arbitral tribunal must admit set-off and counterclaim for two reasons: first, because the arbitration clause contained the relevant agreement of the parties so that the arbitrators must have been aware of that potentially extra workload; and secondly, because in such cases of standardized derivatives transactions, there is no extra workload caused by the admission of set-off and counterclaim in an expedited arbitration.

## V. CONCLUSION

The new DIS Rules for Expedited Proceedings provide parties and arbitrators with a well-balanced system of procedural rules for the conduct of fast-track arbitrations within the institutional framework of the DIS.

<sup>47</sup> Cf. Hobeck, Mahnken & Koebke, *supra* note 2, at 86.

<sup>48</sup> Cf. K.P. Berger & E. Filgut, *Die Zulässigkeit von MAC-Klauseln nach Sec. 18 WpÜG*, W.M. 253 (2005).

<sup>49</sup> Borris, *supra* note 26, at 295; as to the use of fast-track arbitrations in merger and acquisition transactions, see also S.H. Elsing, *Probleme bei M&A Schiedsverfahren*, in Festschrift für Hans-Jochem Luer zum 70 Geburtstag 517, 520 (W. Moll ed., 2008). K. Wach, *Die Wahl der “richtigen” Verfahrensregeln*, in Taktik im Schiedsverfahren, *supra* note 15, at 57, 65.

<sup>50</sup> Cf. the discussion during the DIS Autumn Session 2007 on the topic *Schiedsgerichtsbarkeit in Finanz- und Kapitalmarkttransaktionen*, M. Wiebecke, ... und es gibt sie doch – Schiedsgerichtsbarkeit in Finanz- und Kapitalmarkttransaktionen, *SCHIEDSVZ* 34 (2008); see also P.R. Wood, *INTERNATIONAL LOANS, BONDS AND SECURITIES REGULATION* paras. 5-59 (1995); A. Connerty in 14 *J. INT'L BANKING L.* 65 (1999).

<sup>51</sup> The International Swaps and Derivatives Association (ISDA) is currently developing a master agreement for derivatives transactions with Islamic countries based on the ISDA Master Agreement, 2002, in which the parties are given the opportunity to agree on arbitration as the method of dispute resolution; cf. *A RETROSPECTIVE OF ISDA'S ACTIVITIES 2006-2007*, 28 (ISDA ed., 2007).



However, even the most sensible set of institutional fast-track rules will remain an empty shell unless arbitrators, counsel and parties alike, in each individual case, make themselves aware of their enhanced responsibility for the efficiency and success of the expedited conduct of the arbitration.<sup>52</sup> Candidates for the position of sole arbitrator, party-nominated arbitrator or chairman who are approached in the context of a fast-track arbitration should therefore consider very carefully whether they will in fact be able to meet the time frame laid down in the SREP until the very end of the proceedings, i.e. until their signature under the final award.<sup>53</sup> Once they are appointed, the members of the arbitral tribunal must conduct the arbitration in a much more proactive fashion than a regular arbitration in order to ensure the effectiveness of the expedited procedure.<sup>54</sup> Counsel must be aware from the very outset of the proceedings that they are required to submit briefs and appear and plead in the hearing within a much tighter time frame. Also, a much higher degree of cooperation is required from them as compared to a standard arbitration.<sup>55</sup> This is a point which, in arbitral practice, has caused the failure of many accelerated arbitration proceedings.<sup>56</sup> Finally, the parties should ask themselves whether possible disputes arising out of their contract or a specific dispute that has arisen between them lend themselves to dispute resolution in expedited arbitration proceedings.<sup>57</sup> Thus, complex issues of fact or law which require lengthy “battles of experts” will typically speak against dispute resolution in fast-track proceedings. If the parties want to keep their options open until the dispute has arisen and until they are able to determine whether a specific dispute is apt for fast-track dispute resolution, they may consider providing for a choice in their arbitration clause between standard DIS arbitration and expedited DIS arbitration under the new Supplementary Rules for Expedited Proceedings.

<sup>52</sup> See REDFERN & HUNTER, *supra* note 3, paras. 6–43 (“Unfortunately, it soon became clear that no system would work properly unless all the parties and the arbitral tribunal were ready to co-operate in achieving the accelerated time table”); McIlwrath & Schroeder, *supra* note 1, at 11 (“Of course, arbitral institutions will have to do more than simply enact or modify their rules; they will have to ensure that the reform becomes effective by developing a culture that encourages key issues to be identified and addressed as early in the process as possible.”).

<sup>53</sup> Cf. Scherer, *supra* note 14, at 237 (“Be candid about your availability ... Once you accept the appointment you cannot step down”); see also Van den Berg, *supra* note 29 (“There are at least three persons in this world who believe firmly that a fast-track international arbitration is a very bad concept. That is my wife, my daughter and my son. The experience was a rather complex energy dispute between an American and Asian party, where the place of arbitration was, unfortunately from my perspective, in the Asian country. The award, according to the arbitration agreement, had to be rendered within three months after the commencement of the arbitration. There was no possibility of an extension of time provided for ... The hearings took place on New Year’s day ... we made it, but the consequence was no Christmas turkey, no New Year’s Eve parties, three months out of practice and clients wondering whether I still existed.”).

<sup>54</sup> See J. LEW, L. MISTELIS & S. KRÖLL, *COMPARATIVE INTERNATIONAL COMMERCIAL ARBITRATION* paras. 21–89 (2003) (“In all fast-track arbitrations the tribunal plays a significant role in ensuring that arbitration will be efficient and as rapid as possible.”).

<sup>55</sup> Cf. Van den Berg, *supra* note 29 (“Consider whether the parties are indeed cooperative, and not only cooperative in agreeing to it, but also cooperative in the fast-track process. If one of the parties does not wish to cooperate, notwithstanding having signed the agreement to a fast-track arbitration, you may run into trouble. Then, a fast-track arbitration may become a snail track.”).

<sup>56</sup> See REDFERN & HUNTER, *supra* note 3, paras. 6–43 (“The insuperable hurdle, with a few notable exceptions, was that in most disputes one of the parties had a positive disincentive to cooperate with an accelerated procedure”); one notable exception was the *Panhandle* arbitration, in which the award was rendered nine weeks after the request for arbitration was filed with the ICC International Court of Arbitration, see FOUCHARD, GAILLARD, GOLDMAN, *supra* note 8, at 1248.

<sup>57</sup> *Id.* (“Parties would be well advised to use these accelerated procedures only for issues where they are truly warranted, and which are capable of being resolved on a fast-track basis”).

## Appendix: Annex to the DIS Arbitration Rules 1998: Supplementary Rules for Expedited Proceedings (April 2008)

### INTRODUCTION AND ARBITRATION CLAUSE FOR THE SUPPLEMENTARY RULES FOR EXPEDITED PROCEEDINGS

The parties may agree on the following Supplementary Rules for Expedited Proceedings (“Supplementary Rules”) supplementing the DIS Arbitration Rules. The DIS Arbitration Rules remain applicable to proceedings conducted under the Supplementary Rules to the extent that these Supplementary Rules do not contain more specific provisions.

The German Institution of Arbitration (DIS) advises all parties wishing to make reference to the Supplementary Rules for Expedited Proceedings when concluding the arbitration agreement to use the following arbitration clause:

All disputes arising in connection with the contract [*description of the contract*] or its validity shall be finally settled according to the Arbitration Rules and the Supplementary Rules for Expedited Proceedings of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law.

It is recommended to supplement the arbitration clause by the following provisions:

- The place of arbitration is ... ;
- The substantive law of ... is applicable to the dispute;
- The language of the arbitral proceedings is....

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## Supplementary Rules for Expedited Proceedings

### Section 1. SCOPE OF APPLICATION, DURATION OF PROCEEDINGS

1.1 The Supplementary Rules set forth herein shall only apply if the parties have referred to them in their arbitration agreement or if the parties have agreed on their application prior to filing a statement of claim. Unless otherwise agreed by the parties, the DIS Arbitration Rules as well as the Supplementary Rules in effect on the date of commencement of the arbitral proceedings apply to the dispute.

1.2 The duration of arbitral proceedings conducted under these Supplementary Rules should be no longer than six months (in the case of a sole arbitrator) or nine months (in the case of a three member tribunal) after the filing of the statement of claim pursuant to Sec. 1 sub. 3.

1.3 Pursuant to these Supplementary Rules a statement of claim shall be filed with the DIS Main Secretariat in Cologne. If the statement of claim is filed with another DIS Secretariat, the timeframe for the expedited proceedings referred to in Sec. 1 sub. 2 shall commence upon receipt of the statement of claim by the DIS Main Secretariat.

1.4 The arbitral tribunal shall at all times exercise its discretion to determine the procedure (Sec. 24 sub. 1, 2nd sentence DIS Arbitration Rules) in the light of the parties' interest in expediting the proceedings, as reflected by the parties' agreement to apply these Supplementary Rules. This applies in particular to possible extensions of time limits provided for in these Supplementary Rules.

## Section 2. COSTS UPON COMMENCEMENT OF PROCEEDINGS

In deviation from Sec. 7 sub. 1 DIS Arbitration Rules as read with No. 17 of the Appendix to Sec. 40 sub. 5 DIS Arbitration Rules, the advance to be paid by the claimant upon filing the statement of claim shall cover the full amount of the arbitrators' fees.

## Section 3. NUMBER OF ARBITRATORS, NOMINATION OF ARBITRATORS

3.1 In deviation from Sec. 3 DIS Arbitration Rules, the dispute shall be decided by a sole arbitrator, unless the parties have agreed prior to the filing of the statement of claim that the dispute shall be decided by three arbitrators.

3.2 If the parties have agreed on the individual who is to act as sole arbitrator prior to the filing of the statement of claim, the claimant shall nominate the arbitrator in its statement of claim. In the absence of such agreement, the Appointing Committee of DIS shall appoint the sole arbitrator without undue delay upon request by one of the parties. Such request may be made together with the statement of claim. Until such request is received by the DIS Main Secretariat, a joint nomination of the sole arbitrator by the parties shall be permissible.

3.3 If the parties have agreed pursuant to Sec. 3 sub. 1 to have the dispute decided by three arbitrators, Sec. 6 sub. 2 (5) DIS Arbitration Rules apply in respect of the arbitrator nominated by the claimant. In deviation from Sec. 12 sub. 1 DIS Arbitration Rules, the respondent shall nominate an arbitrator within 14 days of the receipt of the statement of claim by the respondent. If the respondent fails to nominate an arbitrator within this time limit, the claimant may request nomination by the Appointing Committee of the DIS. The chairman of the arbitral tribunal shall be appointed pursuant to Sec. 12 sub. 2 DIS Arbitration Rules, subject to a shortening of the time limit mentioned therein to 14 days.

3.4 If a party-nominated arbitrator or the chairman cannot be confirmed within 7 days of receipt of the request to submit the declaration pursuant to Sec. 16 sub. 1 DIS Arbitration Rules, the Appointing Committee of the DIS shall nominate a substitute arbitrator.

#### Section 4. STATEMENT OF CLAIM, STATEMENT OF DEFENCE AND ORAL HEARING

4.1 Until the arbitral tribunal is constituted, all written communications of the parties shall be transmitted to the DIS Main Secretariat; thereafter they shall be transmitted to the arbitral tribunal. Copies of written submissions shall at all times also be sent to the other party.

4.2 In deviation from Sec. 9 DIS Arbitration Rules, the statement of defence shall be filed by the respondent within four weeks of receipt of the statement of claim pursuant to Sec. 8 DIS Arbitration Rules. Unless the arbitral tribunal determines otherwise all further written submissions by the parties are to be filed within four weeks of receipt of the other party's submission.

4.3 The oral hearing shall be held at the latest four weeks after receipt of the final written submission. The arbitral award shall be rendered at the latest four weeks after the closing of the oral hearing.

4.4 In proceedings under these Supplementary Rules, counterclaims and set-offs shall only be admissible with the consent of all parties and the arbitral tribunal.

#### Section 5. TIME SCHEDULE, PROCEDURE

5.1 At the outset of the proceedings, the arbitral tribunal shall in agreement with the parties establish a time schedule to ensure that the arbitral proceedings can be concluded within the time frame specified in Sec. 1 sub. 2.

5.2 Unless the arbitral tribunal determines otherwise,

- the exchange of written submissions shall be limited to the statement of claim within the meaning of Sec. 6 DIS Arbitration Rules and the statement of defence within the meaning of Sec. 9 DIS Arbitration Rules as well as one further written submission by each party;
- only one oral hearing, including any taking of evidence, shall be held;
- no further written submissions shall be exchanged after the closing of the oral hearing.

5.3 The arbitral tribunal should at the earliest possible stage of the proceedings identify to the parties and as a rule after each round of written submissions, the issues it may regard as relevant and material for the outcome of the case.

#### Section 6. MODIFICATIONS, NONCOMPLIANCE WITH THE TIME FRAME

6.1 The provisions and time-limits contained in these Supplementary Rules may be modified by agreement between the parties. After the constitution of the arbitral tribunal,

any modification shall require the consent of the arbitral tribunal. In the absence of consent of the parties, the arbitral tribunal may only extend a time-limit contained in these Supplementary Rules for good cause. The extension shall be effected by an order in writing, which shall state the reasons for the extension and which shall be transmitted to the parties and DIS Main Secretariat.

6.2 If the arbitral proceeding cannot be concluded within the time frame set forth in Sec. 1 sub. 2, the arbitral tribunal shall inform the DIS Main Secretariat and the parties of the reasons in writing. The competence of the arbitral tribunal shall remain unaffected if the time frame set forth in Sec. 1 sub. 2 is exceeded.

#### Section 7. ARBITRAL AWARD

Unless the parties have agreed otherwise, the arbitral tribunal may abstain from stating the facts of the case in the arbitral award.

## Guide to Authors

The Editor will be pleased to consider contributions provided they are not, or have been, submitted for publications elsewhere. The following is a brief guide concerning the submission of articles which may be of assistance to authors.

1. Articles must be presented in their final form, in English. They should be double spaced with wide margins for ease of editing. Please provide the text in Microsoft Word or Word Perfect, and deliver to the General Editor at [editorjoia@kluwerlaw.com](mailto:editorjoia@kluwerlaw.com)
2. Special attention should be given to quotations, footnotes and references which should be accurate, complete and in accordance with the Journal style sheet, which is available online at [www.kluwerlawonline.com/JournalofInternationalArbitration](http://www.kluwerlawonline.com/JournalofInternationalArbitration).
3. Tables should be self-explanatory and their content should not be repeated in the text. Do not tabulate unnecessarily. Keep column headings as brief as possible and avoid descriptive matter in narrow columns.
4. Please ensure a brief biographical note giving details of the professional/academic status of the author(s) is provided.
5. Due to strict production schedules it is not possible to amend texts after acceptance or send proofs to authors for correction.
6. The submission of a text indicates that the author consents, in the event of publication, to the automatic transfer of all copyrights to the publisher of the Journal of International Arbitration.