

2018 DIS Arbitration Rules Clinic  
15 November 2022, 1<sup>30</sup> pm

## Practice Group Settlement – Kick-off of Phase 2

In Germany, settlement facilitation is part of the procedural approach and tradition in civil matters before courts and arbitral tribunals. German parties generally expect arbitral tribunals to engage in settlement facilitation. The 2018 Arbitration Rules of the German Arbitration Institute (“DIS”) reflect this expectation in Article 26 and instruct arbitral tribunals to seek, at every stage of the proceedings, to encourage an amicable settlement of the dispute(s). However, in many jurisdictions, arbitrators are reluctant to adopt a direct approach to the facilitation of amicable settlements as they would be considered to be stepping outside of their role as dispute adjudicators and could be perceived as compromising their neutrality.

While the idea of settlement of disputes is generally favoured, the types of settlement facilitation techniques which may be employed by arbitrators, and that are considered to be acceptable, do vary as between different jurisdictions. DIS has set up a practice group which has as its objective to foster a better understanding of the various approaches that may be taken towards settlement facilitation in arbitration as a means of dispute resolution in different jurisdictions so as to encourage greater use of the available tools. The work of the practice group is divided in two major phases:

**Phase 1** focuses on fact gathering with regard to different approaches to settlement facilitation in various jurisdictions. This includes clarification as to whether settlement facilitation is perceived to be acceptable in principle and, if so, to what extent and through which techniques. As part of this initial phase, the practice group is inviting a number of leading international arbitration institutions and arbitration experts to present and discuss their respective views. To date, we have held interactive sessions with David Rivkin (Town Elder Rules), Edna Sussman and Klaus Peter Berger (Arbitrator Techniques and their (Direct or Potential) Effect on Settlement) and Karl Mackie and Christopher Newmark (CEDR Rules for the Facilitation of Settlement in International Arbitration). Future sessions with thought leaders in this area are planned.

**Phase 2** of the project will aim to develop approaches to settlement facilitation in light of the findings from Phase 1 and to set these out in a working paper. In working groups focusing on different regions we will seek to bridge gaps between the various legal traditions. Further, aiming to meet party expectations, and with the insights of arbitration practitioners, we will seek to provide guidance and identify tools that may be used in settlement facilitation in a form acceptable in the context of different legal traditions, including inter alia direct and indirect facilitation techniques.

### The kick-off event of Phase 2 will take place on 15 November 2022 in a Zoom video conference (joining details will follow separately)

The kick-off session for the Phase 2 work of the practice group will include a discussion of the detailed program of the practice group.

### Registration

Please register by **13 November 2022** via the link below. By registering you accept the [DIS General Terms and Conditions](#) for Conferences and Workshops. Participation in the event is free of charge.

[Register here](#)

Registered participants will receive the access data by email before the start of the event.

We look forward to seeing you at the kick-off event and to working together with a view to advancing international arbitration practice. We very much appreciate your willingness to dedicate time to this project.

With best regards.

Ulrike Gantenberg, Nicoletta Kröger, Patricia Peterson and Axel Reeg  
(Practice Group Leaders)