

Statute

Mediation and Arbitration Court of German Civil Law Notaries

Part I: Organisation

Article 1 Legal Nature

The Mediation and Arbitration Court of German Civil Law Notaries (Schlichtungs- und Schiedsgerichtshof Deutscher Notare – SGH, hereinafter the ‘Court’) is an institutional arbitral tribunal with special commitment to the concept of Mediation. Its arbitration panels are arbitral tribunals within the meaning of Book 10 of the German Code of Civil Procedure (Zivilprozessordnung – ZPO).

Article 2 Supporting Entity

(1) The Court is an entity without legal personality of DNotV GmbH, with registered office in Berlin.

(2) Substantive supervision lies with the German Notaries’ Association (Deutscher Notarverein, DNotV), with registered office in Berlin.

Article 3 Competence

(1) The Court shall have jurisdiction for all legal disputes which may be subject to arbitration. It may also issue decisions with immediate effect on legal operations (*gestaltende Entscheidungen*).

(2) Claims against a civil law notary in connection with such notary’s official duties shall be excluded, as shall be claims against a civil law notary’s representative or employees.

Article 4 Mediation/Arbitration Agreement

(1) The agreement on the conduct of mediation or arbitration proceedings shall be entered into exclusively between the parties and DNotV GmbH. There shall be no contractual relationship between the parties and persons who conduct or supervise the proceedings on the part of the Court.

(2) No person shall have any entitlement against DNotV GmbH to enter into an agreement for mediation or arbitration proceedings.

(3) The agreement shall be subject to the provisions of this Statute unless the parties expressly agree otherwise in writing. The Statute shall be handed out to each applicant.

Article 5 Board of Trustees

(1) The German Notaries’ Association may appoint a Board of Trustees.

(2) The Board of Trustees shall consist of up to ten persons with reputation in public and profession who are especially committed to mediation and arbitration. One member of the Board of Trustees may be appointed as its Chairperson and another member as its Deputy Chairperson. Members of the Board of Trustees shall be appointed for an indefinite period; they may step down or may be removed from office at any time.

(3) The Board of Trustees shall advise the Court’s Supporting Entity and governing bodies. It shall consult in meetings convened by the Secretariat or in writing.

(4) The members of the Board of Trustees shall serve in an honorary capacity; expenses may be reimbursed.

Article 6 Secretariat

(1) Administration of the Court shall lie with the Secretariat.

(2) The Secretariat shall be headed by a Secretary appointed and removed by DNotV GmbH in agreement with the German Notaries' Association.

(3) The Secretary shall have power of attorney to represent DNotV GmbH in all matters ordinarily arising in the operation of the Court.

(4) A Deputy Secretary may be appointed who shall be able to exercise all powers of the Secretary but shall only act when the Secretary is prevented from doing so.

(5) The Secretariat may adopt rules of procedure for itself. Such rules shall require the approval of DNotV GmbH in agreement with the German Notaries' Association.

Part II: Structure of Arbitral Tribunals

Article 7 Composition of the Arbitral Tribunal

(1) Unless otherwise agreed in the arbitration clause, mediation and arbitration shall be performed by individual arbitrators or arbitration panels of the Court. Arbitrators shall generally be civil law notaries who have agreed to accept the office; the Secretariat may appoint other persons as arbitrators with their consent.

(2) In the cases specified in Section 3 (1) of the Notarisation Act (Beurkundungsgesetz – BeurkG), a civil law notary shall not be appointed as arbitrator; in the cases specified in Section 3 (2) and (3) of the Notarisation Act, a civil law notary shall not be appointed as arbitrator except with the express consent of the parties. A civil law notary appointed as arbitrator shall, if the occasion arises, notify the Secretariat thereof without prompting.

(3) If the parties have agreed to nominate individual arbitrators or all arbitrators themselves subject to application of this Statute, the Court may on application from either party conduct the proceedings in accordance with the provisions that follow provided that the individual arbitrator or chairperson is a civil law notary. The Secretariat may allow exceptions.

(4) The arbitral tribunal consists of an individual arbitrator. On application from either party it shall consist of a chairperson and two associate members (arbitration panel). The application must be filed within a time limit to be set by the Secretariat. The arbitral tribunal shall hear and decide in accordance with the provisions that follow. Arbitrators are referred to as such in this Statute including in instances where they serve only as mediators.

Article 8 Designation of the Arbitrator and Venue of the Proceedings

(1) Following receipt of an application for mediation or arbitration, the Secretariat shall designate the arbitrator and the venue of the arbitration proceedings in accordance with the provisions of the Code of Civil Procedure. The Secretariat shall notify the parties in writing of the name and office address of the individual arbitrator or of the chairperson and any associate members and of the venue of the arbitration proceedings and shall put in force the time limit under Article 7 (4).

(2) If the parties agree to appoint other arbitrators for specific or for all positions on the Court, the Secretariat may refuse the proceedings being conducted by the Court. In all other respects, Article 9 shall apply accordingly.

(3) If an arbitrator is rejected for an allegation of bias, the motion for rejection shall be submitted to the individual arbitrator or to the chairperson of the arbitration panel within two weeks of the party gaining notice of the reason for rejection; the reason for rejection shall be named and substantiated by that time. If an arbitrator is rejected, the Secretariat shall designate a replacement. The arbitral tribunal thus composed shall decide on the motion for rejection; if the arbitral tribunal declares the rejection to be justified, the composition of the arbitral tribunal with the replacement shall remain.

(4) If a party applies for an arbitrator to be removed because of inability to perform their duties, the preceding paragraph shall apply accordingly. If an arbitrator steps down from office or otherwise ceases to be available, the Secretariat may appoint a replacement ex officio.

Article 9 Nomination of Arbitrators by the Parties

(1) If the parties have agreed to nominate the arbitrators themselves, they shall initially proceed in accordance with the statutory rules. If according to these rules an arbitrator is to be appointed by a court of law, the Secretariat shall take the place of the court of law. The Secretariat may on application from the arbitration applicant undertake to serve the request for arbitration (Statement of Claim) on the other party, to call upon the other party to nominate an arbitrator and to take the remaining steps necessary to constitute the arbitral tribunal.

(2) The individual arbitrator or the chairperson shall apply to the Secretariat for the proceedings to be taken over by the Court. No such application shall be required if the individual arbitrator or the chairperson has been designated by the Secretariat.

(3) The Secretariat shall call upon the arbitrator or arbitrators to declare acceptance of the arbitrator's office under this Statute by a time limit set by the Secretariat. If said declaration is not received within the time limit, the Secretariat may refuse the conduct of the proceedings before the Court.

(4) In all other respect, the arbitral tribunal thus composed shall be deemed an arbitration panel within the meaning of this Statute.

Article 10 Liability and Insurance

(1) In the event that an arbitrator breaches an arbitrator's duty, the arbitrator and the Court shall only be liable for any resulting loss or damage to the extent that liability would be owed by the judge of a state court or by the state in place of the respective judge. Liability for minor negligence shall be generally excluded. The Court shall not be liable for any breach of duty by an arbitration panel member appointed not by the Court but by the parties themselves.

(2) If an arbitrator's services are not already covered by liability insurance, the Court shall take out liability insurance in favour of the arbitrator and the parties and in the amount of the value in dispute. The Court shall not be required to take out insurance for any breach of duty by arbitrators appointed not by the Court but by the parties themselves or by third parties. Arbitrators who are not civil law notaries shall declare without delay following their appointment to the Secretariat that they have taken liability insurance and shall provide proof thereof on request.

Part III: Common Rules of Procedure

Article 11 Party Initiative

(1) Unless otherwise stipulated herein, the arbitral tribunal shall decide in the proceedings at its sole discretion

(2) The procedural provisions may be derogated by the parties (Parteidisposition). If the parties agree to a procedure that contradicts the principles of this Statute, the arbitral tribunal may at its sole discretion refuse to continue the proceedings.

(3) Continuation of the proceedings may be refused in particular if the parties oppose to an acceleration of the proceedings.

Article 12 Applications to Initiate Proceedings

(1) The Court shall only act on application. Applications shall be directed exclusively to the Secretariat.

(2) Applications shall be made in writing. If applications are received in electronic form, the Secretariat shall decide at its discretion whether to demand written confirmation signed by the applicant's own hand. The Secretariat does not assist with the submission of applications.

(3) Acceptance by the Secretariat of applications to initiate or take over proceedings shall always be made in writing.

(4) Acceptance of an application shall be conditional upon the payment of an advance in the amount of the full costs of the proceedings (mediation and adversarial proceedings).

Article 13 Initiation of Proceedings

(1) As soon as an application has been accepted and the advance has been received, service of the application shall be made on the other party by the Secretariat. Unless Article 9 applies, this shall take place in agreement with the chairperson. On serving the application, the Secretariat shall set a reasonable time limit for the arbitration respondent to submit a statement of defence.

(2) The Secretariat shall thereupon notify the arbitral tribunal without delay and thereafter shall exclusively proceed in accordance with the arbitral tribunal's instructions. After serving of the action, any written pleadings shall be submitted exclusively to the individual arbitrator or the chairperson of the arbitration panel. This shall not prejudice the responsibilities of the Secretariat in the event of an arbitrator ceasing to be available or being rejected.

Article 14 Course of Proceedings

(1) The arbitral tribunal shall determine the further course of proceedings. It shall take care at all stages of the proceedings of accelerated settlement and amicable resolution.

(2) The arbitral tribunal shall ensure that the Secretariat is kept informed of all proceedings such that it has a complete and current set of the proceeding records at all times.

(3) The Secretariat shall give the arbitral tribunal all support that the latter requests. Payment shall be made exclusively to and by the Secretariat.

Article 15 Service of Documents

(1) Service shall be deemed effectively made when at the instigation of the arbitral tribunal or the Secretariat the document to be served enters by whatever means into the notice of the person it is served upon.

(2) Service shall be deemed to be effected if made to the address last notified to the Secretariat even if the document concerned proves undeliverable at that address.

(3) Documents by means of which proceedings are initiated shall be served in accordance with the statutory provisions on service of documents upon party initiative ("Zustellung im Parteibeitrieb") or shall be served against written return confirmation of receipt. All other documents may be served by ordinary mail. If a document is served by registered mail or comparable means, service shall also be deemed to be effected if the addressee is not found and the document is deposited with the person serving it.

(4) In the case of service by ordinary domestic mail, a document shall be presumed received on the third day after sending unless there are serious doubts on such receipt.

(5) With regard to the question of whom a document may alternatively be served upon if the addressee is not found or does not receive notice of the document (substitute service), the provisions of the German Code of Civil Procedure shall apply accordingly, including in the event of service abroad.

(6) Documents may be served by electronic means if a party or a party's representative indicates consent. Such consent shall be presumed if an address of the appropriate kind is stated on a letterhead or similar.

(7) If a party appoints a lawyer to represent them in the proceedings, service shall be made exclusively on the lawyer. In all other respects it shall be at the discretion of the Secretariat whether service is made upon the parties themselves or their representatives.

(8) If any means of service requested by a party appear insecure or if delays are to be reckoned, the Secretariat or the arbitral tribunal may demand the designation of a person authorised to accept service.

(9) Statutory rules under which in specific cases service is deemed to have been effected shall likewise apply under this Statute.

Article 16 Pleadings

The parties shall enclose with any pleadings they submit to the arbitral tribunal the number of transcriptions of the pleadings and their supporting documents that is needed for serving them. This shall not apply for documents sent electronically or for supporting documents that the opponent already has in the original or in transcript.

Article 17 Hearings

(1) The arbitral tribunal shall determine the form, venue and timing of hearings. Except where infeasible, it shall give due consideration to the parties' mutual preferences.

(2) If a party demands oral hearings, the arbitral tribunal shall grant them unless the other party objects for legitimate reasons. The arbitral tribunal may also refuse an application for oral hearings ex officio if at its sole discretion unreasonable efforts or unreasonable delay are to be reckoned.

(3) The parties may be ordered to appear in person.

(4) The arbitral tribunal shall decide on admission of any counterclaim at its sole discretion.

(5) Hearings shall be conducted in German. Hearings may be conducted in another language – without interpretation into German – if all parties consent and the arbitral tribunal has command of the language concerned.

(6) The arbitral tribunal may at its discretion require further advances on the costs of proceedings, including from the opponent.

Article 18 Costs

(1) The Court shall charge costs in accordance with a cost schedule which is to be compiled by the Secretariat and which is to be published in like manner to this Statute.

(2) All parties participating in the proceedings shall be jointly and severally liable for all costs, including when the arbitral tribunal has decided on the costs.

(3) The arbitral tribunal shall decide at its discretion which party in what proportion is to meet or reimburse costs and what costs in addition to those of the Court are reimbursable.

Part IV: Mediation

Article 19 Scope

(1) The provisions of this part shall apply when the applicant expressly applies solely for and mediation and conciliation and not for a binding decision.

(2) Mediation shall not require the prior signing of a mediation or arbitration agreement.

(3) Mediation proceedings may still proceed if the other party does not agree to them.

(4) Any mediation rules recognised by Bundesnotarkammer (BNotK; Federal Chamber of German Civil Law Notaries) shall be complied with to the extent that they are not in contradiction with this Statute.

Article 20 Proceedings

(1) Mediation proceedings shall be held before an individual arbitrator unless the parties expressly demand the involvement of associate members (an arbitration panel).

(2) The Secretariat or the arbitral tribunal shall instruct the parties that according to this Statute mediation proceedings do not constitute official duties of a civil law notary and that they may also appoint a civil law notary of their choice in place of the Court. If an application is withdrawn on account of this instruction, the proceedings shall be free of charge. The instruction shall be omitted if and to the extent that the Court is recognised as a dispute-resolution entity and referral to a dispute-resolution entity is a statutory precondition for proceedings before state courts.

(3) If the parties reach agreement, the individual arbitrator or the chairperson or an associate member shall not be prevented from notarising the agreement in his capacity as a civil law notary. They shall bring notice, however, to the fact that this constitutes separate proceedings, that the costs of each proceedings are incurred independently and that the parties may also entrust the notarisation to any other civil law notary.

(4) The arbitral tribunal shall determine by decision the point in time at which the proceedings have failed and are discontinued.

(5) A decision concerning costs under Section 18 (3) of this Statute may still be made if the proceedings have failed.

Part V: Arbitration proceedings

Article 21 General principles

(1) Arbitration proceedings under this Statute shall be arbitration proceedings under German law in accordance with Book 10 of the German Code of Civil Procedure including where hearings are conducted in a foreign language or individual hearings are held abroad.

(2) The arbitral tribunal shall first verify its competence and in the same context the existence or the validity of the arbitration agreement.

Article 22 Mediation Phase

(1) All arbitration proceedings shall commence with a mediation phase before the individual arbitrator or the chairperson of the arbitration panel.

(2) Mediation shall end, if possible, with an arbitration award with agreed wording (arbitration settlement) or a notarial record in accordance with the provisions of the Notarisation Act.

(3) The mediation phase shall pass into adversarial proceedings if the arbitral tribunal determines that the mediation phase has failed. In that respect the arbitral tribunal is not bound by the parties' submissions.

(4) If a party does not agree to the proceedings or fails to appear for an appointed oral hearing, the arbitral tribunal may move on to the adversarial proceedings without further summons.

Article 23 Adversarial Proceedings

(1) In cases as specified in the second sentence of Article 7 (4), the adversarial proceedings shall be conducted before the entire arbitration panel.

(2) Only after the commencement of adversarial proceedings shall the arbitral tribunal examine the admissibility of arbitration action and of the demands for relief.

(3) The arbitral tribunal may set time limits for entering an appearance to the proceedings, for petitions and for naming and presenting evidence and on expiry of said time limits exclude the party with further submissions.

(4) If in the arbitral tribunal's conviction the parties have had ample opportunity to make submissions, the arbitral tribunal may set a time limit after which new submissions by the parties on the facts may be rejected.

(5) The arbitral tribunal may discontinue the proceedings if:

- a requested advance on costs is not paid on time; or
- the parties, despite exhortation by the arbitral tribunal, fail to continue to pursue the proceedings or continuation is not possible for other reasons.

A decision is handed down including a decision on the costs of the proceedings.

Article 24 Arbitration Award

(1) The arbitral tribunal shall decide in accordance with the law that is to be applied to the legal relationship in dispute under German private international law. Within the limits of ordre public, it shall recognise a choice of law even if German private international law or the law otherwise to be applied does not permit it. An agreement to

have a dispute decided by the Court shall not be construed in case of doubt as a choice of German substantive law.

(2) In the event of a decision based on considerations of what is fair and equitable, the provisions of the German Code of Civil Procedure shall apply.

(3) In the event of failure of a party to appear, the arbitral tribunal shall decide on the basis of the record as it stands; it shall decide at its discretion and conviction whether it deems assertions of the other party as conceded merely on account of the failure to appear.

Part VI: Interpretation and transitional provisions

Article 25 Interpretation

If it is agreed in an arbitration agreement that a legal dispute is to be decided by the Court or by arbitrators to be appointed by the German Notaries' Association, in case of doubt the present Statute shall apply.

Article 26 Applicability Ratione Temporis

This Statute shall apply in the version in force at the time the first application is received at the Secretariat unless the parties have agreed otherwise.

Article 27 Entry into force, amendment and repeal

(1) This Statute is issued by the President of the German Notaries' Association (Deutscher Notarverein) and the Management of DNotV GmbH and shall enter into effect on publication in notar, the journal published by Deutscher Notarverlag.

(2) Any amendment or repeal of this Statute shall likewise require the form stipulated in paragraph (1).

Cost Schedule

Mediation and Arbitration Court of German Civil Law Notaries

Part I: General provisions

Section 1 Principle

The Mediation and Arbitration Court of German Civil Law Notaries (*Schlichtungs- und Schiedsgerichtshof Deutscher Notare - SGH*, hereinafter the 'Court') shall charge fees, expenses and advances (costs) in accordance with the Statute and this Cost Schedule.

Section 2 Creditor in Respect of Costs

The Court shall be the sole creditor in respect of all costs.

Section 3 Due date for payment

(1) Fees shall be due on materialisation of the circumstances for which they arise.

(2) Expenses shall be due when incurred and billed.

(3) Advances shall be due when duly charged.

Section 4 Value Added Tax

Statutory value-added tax shall be payable in addition.

Section 5 Payment

(1) Payment shall be made, free of bank charges and other costs, in European currency, exclusively to the account stated by the Secretariat.

(2) The debtor shall be in default towards the Court when the debtor receives a written payment demand. The Court shall levy a late payment fee of € 50 and default interest in the amount of five percentage points above the prevailing base rate pursuant to Sec. 247 German Civil Code (Bürgerliches Gesetzbuch – BGB).

(3) The debtor may solely set off undisputed or legally enforceable claims.

Section 6 Deferral

The Court may defer the issue and service of decisions and orders to all parties until due costs, late payment fees and default interest are paid.

Part II: Fees

Section 7 Value in Dispute Fee

(1) Fees shall be determined according to the value in dispute.

(2) Injunctions shall constitute independent proceedings unless they are applied for in already pending proceedings on the main action.

(3) The value in dispute under the claim and counterclaim shall be added together. Contingent counterclaims shall count in full even if the contingency does not arise.

(4) If only an individual arbitrator serves, for a value in dispute of up to € 5,000, the fee shall be 20 % of the value in dispute or € 500, whichever is greater. The fee shall increase as follows:

- a) up to a value in dispute of € 50,000, by € 200 for each commenced additional € 2,500
- b) up to a value in dispute of € 500,000, by € 150 for each commenced additional € 5,000
- c) up to a value in dispute of € 5,000,000, by € 600 for each commenced additional € 50,000
- d) above a value in dispute of € 5,000,000, by € 600 for each commenced additional € 500,000

(5) If the full arbitration panel serves, the fee shall be three times the rates stipulated above. The rate for the full arbitration panel shall be applied if the full arbitration panel serves at any phase of the proceedings.

(6) Hereinafter “fee” shall refer to the fee which would be incurred on the making of an arbitration award.

(7) Only the fees expressly stipulated here shall be charged.

Section 8 Initiation of Proceedings

10 % of the fee shall be due on receipt of an application pursuant to Article 12 of the Statute.

Section 9 Mediation

(1) A further 30% of the fee shall be incurred for mediation in accordance with Article 19 of the Statute; this shall be due when the Secretariat accepts the application.

(2) No additional fees shall be incurred for an arbitration award with agreed wording.

(3) No further fee pursuant to Section 8 shall be incurred if an application for conduct of arbitration proceedings is made within one month of a determination that mediation has failed.

Section 10 Arbitration Proceedings

(1) A further 30 % of the fee shall be incurred for the mediation phase in accordance with Article 22 of the Statute; this shall be due when the Secretariat accepts the application. This fee shall be waived in the case specified in Section 9 (3). No additional fee shall be incurred if an arbitration award with agreed wording is made in the mediation phase in accordance with Article 22 of the Statute.

(2) A further 40 % of the fee shall be incurred for the adversarial arbitration proceedings. If neither mediation proceedings nor a mediation phase have taken place, the fee in accordance with paragraph 1 shall be incurred in addition. These shall be due when the failure of mediation is determined and in the case specified in Section 9 (3) on receipt of the application by the Secretariat.

(3) No additional fee shall be incurred for an arbitration award with agreed wording.

(4) The remaining 20 % of the fee shall be incurred for other arbitration awards.

Section 11 Communication Expenses

(1) All communication expenses actually incurred shall be charged, including but not limited to postage and telephone charges.

(2) A lump sum may be charged in place of communication expenses actually incurred. This shall be € 250 up to a value in dispute of € 5,000. For a larger value in dispute, it shall increase by 10 % of the fee in accordance with Section 7 up to a maximum of € 6,000.

(3) Only half of the lump sum shall be incurred for mediation in accordance with Article 19 of the Statute. In the case specified in Section 9 (3), the additional half of the lump sum, if applicable, shall be incurred on submission of the application to conduct arbitration proceedings.

Section 12 Additional Communication Expenses

In addition to the lump sum there shall be charged:

(1) Costs of any special means of delivery desired by the parties, such as for a courier service;

(2) Costs of telecommunication with places outside of the European Community;

(3) Costs of formal service.

Section 13 Travel Expenses

(1) Travel expenses shall only be charged if it is necessary for arbitrators to travel to a place other than the venue of the arbitration proceedings. If the parties designate an arbitrator who does not live at and does not have an office at the venue of the arbitration proceedings, travel expenses shall be charged for travel to the venue of the arbitration proceedings.

(2) Costs of the use of an own motor vehicle shall be refunded in the amount of €1 per km; if other means of travel are used, costs of first class travel shall be refunded.

(3) Costs shall be refunded for overnight accommodation (including breakfast) in upper category hotels.

(4) A daily expense allowance of € 100 per calendar day shall be refunded for each arbitrator.

Section 14 Costs of Premises

Costs shall be refunded for the rental of premises for oral hearings.

Section 15 Interpreters and Minute-takers

Costs shall be refunded for minute-takers, interpreters and translators.

Section 16 Taking of Evidence

(1) All costs shall be refunded that are incurred in connection with the taking of evidence.

(2) Regular and expert witnesses shall be paid travel expenses and loss of earnings at the discretion of the arbitral tribunal.

(3) The arbitral tribunal may grant expert witnesses commensurate remuneration.

Section 17 Disbursements

Disbursements by the Court shall be refunded in respect of court costs, other state charges or other expenditures that have been made by the Court at the request or in agreement with the parties.

Section 18 Proceedings in Courts of Law

(1) If an arbitrator or a member of the Secretariat is summoned before a court of law in connection with the arbitration proceedings, travel expenses in accordance with Section 13 shall be reimbursed.

(2) A lump sum amount of € 750 for loss of earnings shall – regardless of the incurrance of travel expenses – additionally be paid for each day or part thereof.