

Press Release

Düsseldorf, August 21, 2018

Arbitrators shall speed up executive liability proceedings

If managers are responsible for misconduct in their company, the court proceedings often drag on for years. Specialized arbitration tribunals will now settle complex D&O disputes in less than twelve months.

Three years went by at the Siemens „slush fund“ scandal before the company received compensation from the manager liability insurance and nine years before the dispute over compensation payments with the responsible executives was over. At Volkswagen, the negotiations have not even begun, even though the emission scandal has been smoldering since 2015.

Manager liability procedures are complex and lengthy

„The situation is similar with less prominent managerial liability cases,“ says Marcel Armon, CEO of Howden Germany, a Düsseldorf-based brokerage firm specializing in D&O insurance: „It takes an average of three and a half years for medium-sized companies and five to seven years for large companies until a manager liability claim can be ticked off.“

The sluggish processing burdenes companies and managers

The result: the affected companies and their shareholders often sit for years on millions of pecuniary losses. And the managers, who are alleged to have caused them by making wrong decisions, hang in the air.

D&O arbitration tribunals shall shorten procedures

Now, new rules of arbitration tailored to the needs of executive liability cases will help to reach a decision on complex disputes in less than twelve months. The idea: As an alternative to the state courts, managers and companies can have their D&O disputes finally resolved by a specialized arbitration court more quickly, cost-effectively and without reputational damages. „We negotiate everything in just one instead of the previous two state court instances and can thus reduce the costs for lawyers, appraisers and courts enormously“, emphasizes the initiator Michael Hendricks.

Top-class specialists sit on the bench

Together with the legal expert Beata Drenker from Howden Germany, the Düsseldorf lawyer and D&O pioneer Hendricks has called high-caliber comrades into action with his innovation. Among them are more than a dozen ex-judges, university professors and top lawyers from the fields of manager liability and D&O insurance law as well as the arbitration institution ARIAS Deutschland e.V. ARIAS is already conducting arbitration in insurance and reinsurance cases. „We are pleased to be able to provide not only practical arbitration rules, but also a number of highly qualified arbitrators for the swift and cost-effective solution of D&O disputes“, says the chairman of the association ARIAS Deutschland, Dr. Hans-Werner Rhein.

D&O policy shall cover the legal costs and the financial loss

The main reason for the hitherto sluggish settlement are the complex conflicts of interest that arise in a D&O claim event: Many companies conclude a D&O insurance policy (manager liability insurance) to protect their salaried managers against the consequences of a claim for financial losses in the event of their own misconduct. It is intended to cover the legal costs for the defense against unjustified claims and in the event of justified claims to provide indemnification for the financial loss.

The Supervisory Board and the Executive Board often argue for many years

The problem: In almost every D&O insurance case, the Supervisory Board and the Executive Board argue violently about whether there even is a management error. The costs of these liability disputes already average 70% of the overall payments made by D&O insurers. There is often little margin left to compensate the company or third parties such as investors or business partners for the financial loss. Even more, once the liability issue has finally been resolved, further negotiations between the company and the D&O insurer usually follow about coverage issues.

D&O arbitration allows claim clarification in one instance only

This is exactly where the new D&O arbitration procedure comes in. Together, the partners of the Hendricks and Howden initiative have developed new D&O Arbitration Rules, which for the first time make it possible to clarify in one rather than two court instances whether a manager has actually breached duties and is therefore liable and if and how much the D&O insurer has to pay. The arbitration award is legally binding, because there are no appeals against arbitral awards. And because the D&O insurer also participates in the multiparty procedure, the insurer must recognize the arbitral award and pay accordingly.

All participants are spared from time-consuming procedures through the instances

„We assume that the insured managers will prefer our new arbitration procedure to the ordinary legal state court procedure, because it saves all parties from the exhausting and costly process through the instances,“ says D&O expert Hendricks. And the insurers are also in favor of the new D&O arbitration procedure. „In individual claims cases, we can already enable companies and managers to work their way through arbitration proceedings,“ says Howden CEO Marcel Armon: „The negotiations that our insurance industry partners generally grant the insured managers of our clients the way to the arbitration tribunal are already underway“. Faster processes could also help alleviate the deficit in D&O insurance as a whole. The industry is struggling because of the growing tide of mid-sized cases of liability and multi-billion liability scenarios à la VW

The following images are released for reprint.

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Hendricks + Partner specializes as a law firm in management liability scenarios. The legal team around the D&O expert Michael Hendricks has more than twenty years of expertise in the area of liability and D&O insurance..

www.hendricks-partner.de

Howden Germany GmbH is the market leader for D&O-insurance. The insurance-independent D&O specialist broker advises companies, executives and their insurance brokers on the topics of manager liability, legal expenses and financial loss insurance (financial lines) and cyber insurance. Around 60 insurance experts - including many lawyers - negotiate the best conditions for companies and managers with insurers and help them if they are sued for financial losses. The subsidiary of the internationally active Howden Broking Group with locations in Dusseldorf, Hamburg and Munich offers worldwide insurance cover.

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