

# Vienna International Arbitral Centre (VIAC)

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## 1. INSTITUTIONAL HISTORY AND ORGANISATIONAL FRAMEWORK

### 1.1 How is the institution organised and run and what is its history?

Until 1974, the various Regional Economic Chambers of the nine Austrian federal provinces handled mostly national cases with their permanent arbitral tribunals under their uniform Arbitration Rules. The growing importance of Austria as a venue for East-West disputes in the 1960s led to the establishment of a permanent arbitral centre for the administration of international disputes by the Austrian Federal Economic Chamber (AFEC) in 1974. The Vienna International Arbitral Centre (VIAC) of AFEC became operational on 1 January 1975 (Melis, “Austria” (1979) IV YB Comm. Arb. 21).

AFEC is a self-governing body established under Austrian public law. VIAC is functionally, structurally and legally integrated into AFEC and not a separate legal entity. Despite this, VIAC and the VIAC Board (the Board) members are independent in that they are not subject to any directives from AFEC. This independence is guaranteed by the *Austrian Federal Act on Economic Chambers (Wirtschaftskammergesetz 1998; BGBl I 103/1998 as amended)*. Also, the arbitration services offered by VIAC are of a private contractual nature. VIAC is not an arbitral tribunal itself but solely administers arbitral proceedings (F. Schwarz and C. Konrad, *The Vienna Rules: A Commentary on International Arbitration in Austria* (Alphen aan den Rijn: Kluwer Law International, 2009), paras 1-006 onwards).

VIAC consists of:

- the Board (art.2 of the Vienna Rules 2018) of at least five members (currently thirteen members and an honorary member) appointed for a

period of five years by the Enlarged Presiding Committee of the AFEC by recommendation of the President of VIAC. Reappointment is permissible. The Board members are not employees of AFEC and consist mainly of prominent members in the field of arbitration from various professions, including lawyers, academics and judges. It is an unremunerated honorary office. VIAC acts through its Board, the meetings of which are convened by its President in regular intervals. Meetings are not open to the public. Decisions are taken by majority vote (alternatively by written circular) and are treated as confidential;

- the President (art.2(2) of the Vienna Rules 2018) is elected by the members of the Board (and is one of their number);
- the International Advisory Board (art.3 of the Vienna Rules 2018) consisting of 24 international arbitration experts who are invited by the Board of VIAC;
- the Secretary-General and the Deputy Secretary-General (art.4 of the Vienna Rules 2018) are appointed by the Enlarged Presiding Committee of the AFEC for a period of five years. The Board has a right to propose a candidate for the positions of Secretary-General and Deputy Secretary-General. Reappointment is permissible. The Secretary-General and his or her deputy, unlike the Board members, are employees of AFEC. As executives, they enjoy special rights, such as being independent and not subject to any directives. If a Deputy Secretary-General has been appointed, he/she may render decisions that fall within the competence of the Secretary-General if the latter is unable to perform his or her duties or, with authorisation from the Secretary-General. The Secretary-General does not need to consult with the Board concerning matters entrusted to him or her. The tasks of the office are to direct the activities of the Secretariat and to perform the administrative activities of VIAC insofar as they are not reserved for the Board, including setting in motion the arbitral proceedings (prima facie scrutiny of a claim, its delivery to the respondent, the arbitrator's contract; collection of the advance on costs) and determining the costs at the end of the proceedings, confirming the award and delivering it to the parties (Schwarz and Konrad, *The Vienna Rules (2009)*, paras 5-007 onwards). The Secretary-General also assists the Board in its tasks and is generally available to parties and arbitrators for requests and advice regarding the administration of the cases. If the Secretary-General and the Deputy Secretary-General become unable to perform their duties, a Board member is appointed to perform the relevant functions until a Secretary-General is appointed; and
- the Secretariat which is the executive arm of the Secretary-General, consisting of legal counsel, case managers and assistants.

## **2. REGIONAL SCOPE AND STATISTICS**

### **2.1 Which regions are covered by the institution?**

VIAC is a permanent arbitral institution offering its services worldwide but with a strong focus on the Central and Eastern Europe (CEE)/South East Europe (SEE) and Commonwealth of Independent States (CIS) region.

Before the new Vienna Rules and Vienna Mediation Rules (jointly referred to as the VIAC Rules) came in to force as from 1 January 2018, VIAC has been administering international disputes only, where either at least one of the parties had its seat outside Austria or the dispute had an international character (in domestic cases). As of 1 January 2018, VIAC administers domestic and international cases, implementing the amendment of s.139 of the WKG (*Austrian Federal Act on Economic Chambers*) of 17 May 2017 (*Federal Law Gazette I No.73/2017* of 19 June 2017) (art.1 of the VIAC Rules). There are no regional limits (compare G. Horvath and R. Trittman, *Handbook Vienna Rules: A Practitioner's Guide* (VIAC, 2014), art.1 mn.6 onwards; M. Heider and A. Fremuth-Wolf, *Handbook Vienna Rules* (WKÖ Service GmbH, 2014), art.4 mn.13 onwards).

The number of pending cases, as per 31 December 2017, was 59 with an aggregated amount in dispute of EUR 621 million. It is noteworthy that, in 2017, out of 84 parties involved in arbitration cases, 27 were of Austrian nationality (32%) while 57 were from abroad (38% from the remaining European countries, 18% from Asia, 10% from America, 2% from Africa and Oceania).

Table 1 below sets out more fully the nationalities of the parties involved in the pending cases administered by VIAC as at the end of 2017.

**Table 1**

Austria	27	Lebanon	2
Belarus	2	New Zealand	1
The British Virgin Islands	1	The Netherlands	3
China	2	Romania	1
Cyprus	2	Russia	6
Czech Republic	5	Serbia	1
Denmark	1	Seychelles	1
Germany	4	Slovak Republic	1
Hungary	1	Slovenia	2
Isle of Man	1	Sweden	1
Israel	1	Turkey	1
Italy	1	Ukraine	3
Macau	1	United Kingdom	2
Macedonia	2	United States	7
Moldavia	1		

### **3. RULES**

**3.1 Which arbitration rules are associated with your institution? What are the main areas covered by those rules? Are there any distinguishing features for example with respect to expedited formation? Have your rules recently changed or are they about to change? If so, how?**

The most current rules of VIAC were adopted on 29 November 2017, entering into force on 1 January 2018. This revision of the 2013 rules was

mainly triggered by the change in the law regarding the administration of domestic disputes and left most parts of the 2013 version unchanged. More details regarding the changes can be found in s.16 (“Recent Developments”) below. The current Vienna Rules are available at: <http://viac.eu/en/arbitration/arbitration-rules-vienna> [Accessed 21 May 2018] in German and English (authentic versions). The 2013 version is available in 13 additional languages such as Arabic, Chinese, Czech, Italian, Korean, Polish, Portuguese, Romanian, Russian, Slovak, Spanish, Turkish and Ukrainian. We are currently working on the translation of the 2018 rules into all these and more languages with the help of learned arbitration practitioners from the respective regions.

Any reference in this chapter to articles (e.g. art.3 etc) refers to the Vienna Rules 2018. A detailed commentary on the Vienna Rules 2013 in English or German language was published as *Handbook Vienna Rules: A Practitioner’s Guide* in December 2013 and may be ordered online or at the VIAC Secretariat. VIAC is currently revising the Handbook and preparing a second edition, providing insight into the background of the amendments. The new commentary will be available in German and English by the end of 2018.

The Vienna Rules cover the following main areas: all actions necessary to initiate and maintain arbitral proceedings, i.e. receipt of statement of claim and answer to the statement of claim as well as counterclaim, forwarding of these statements to the other parties; collection of registration fees and deposits against costs of arbitration; confirmation of arbitrators; substitute appointment of arbitrators; challenge and replacement of arbitrators; liability; conduct of the arbitral proceedings; multi-party arbitration, including joinder of third parties and consolidation; interim measures of protection and security for costs; termination of the proceedings and rendering of the award; publishing of awards; correction, clarification and supplementation of the arbitral award; costs and fees; and special regulations for expedited proceedings.

### **Expedited proceedings**

One notable innovative aspect introduced by the Vienna Rules 2018 concerns the possibility of arbitrating under a fast-track procedure (art.45). This procedure will apply where agreed by the parties under an opt-in mechanism, irrespective of the amount in dispute.

The median duration of proceedings at VIAC is just over one year (12.5 months). If the parties have included the supplementary rules on expedited proceedings in their arbitration agreement or subsequently agreed on their application until the submission of the Answer to the statement of claim, the characteristics of the expedited procedure are typically as follows:

- the time limit for payment of the advance on costs is reduced to 15 days;
- counterclaims or set-off-claims are admissible only within the time limit for submission of the answer to the statement of claim;
- expedited proceedings shall be conducted by a sole arbitrator, unless the parties have agreed on a panel of arbitrators;
- the nomination of an arbitrator and/or the chairperson has to be made within 15 days;
- the award shall be made within six months after transmission of the file

to the arbitrator(s). The Secretary-General, on his or her own initiative or upon a reasoned request from the arbitrator(s), may extend the time limit if he/she deems it necessary;

- the number of submissions is limited; and
- to the extent requested by a party or deemed necessary by the arbitrator(s), the dispute shall be decided after holding only one hearing for the taking of evidence and addressing all legal issues.

### **Mediation Rules and Arb-Med-Arb Proceedings**

VIAC offers administration of mediation, conciliation and other alternative dispute resolution (ADR) instruments as part of its services. Since 1 January 2018, the Vienna Mediation Rules that were introduced in 2016 have become an equal Pt II of the VIAC Rules. VIAC also offers combinations of these two proceedings as Arb-Med-Arb. See in s.15 below for further details.

### **Ad hoc proceedings—VIAC as appointing authority**

VIAC also assists in ad hoc proceedings by providing necessary infrastructure and regularly acts as an appointing authority (see Annex 4 to the VIAC Rules). This also applies to arbitral proceedings under the auspices of the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules 1976 (last revised in 2013).

### **European Convention 1961—AFEC as appointing authority**

The president of AFEC regularly performs all tasks under the European Convention on International Commercial Arbitration 1961 and is also available as appointing authority under the UNCITRAL Arbitration Rules (see Heider and Fremuth-Wolf in *Handbook Vienna Rules* (2014), Annex 4 mn.6 onwards).

## **4. COMPLEX ARBITRATIONS**

**4.1 Have your arbitration rules developed specific provisions to address common joinder and consolidation issues which arise in multi-party arbitrations? How do you add an additional party to an on-going arbitration? How do you pursue claims arising out of multiple contracts in a single arbitration and combine two or more separate but related arbitrations?**

### **Constitution of an arbitral tribunal in multi-party proceedings**

The constitution of the arbitral tribunal in multi-party proceedings follows the general rule as provided for in art.17 and as outlined in s.9.1 below. The claimant is always free to direct its claim against two or more respondents (see A. Fremuth-Wolf and Y. Schuch, “The New Arbitration Rules of the Vienna International Arbitral Centre (Vienna Rules 2013)” (2013) 16(6) Int. A.L.R. 198, 202); the final decision on the admissibility of multi-party proceedings is, however, up to the arbitral tribunal. Article 18(3) stipulates that participation in the nomination of an arbitrator does not (necessarily) constitute consent to multi-party arbitration as such.

There are special procedures concerning the constitution of an arbitral tribunal in multi-party arbitrations. There are no special procedures if a sole arbitrator is to be nominated because the parties jointly have to agree on a person and if they fail to do so, the sole arbitrator will be appointed by the

Board.

If the dispute is to be resolved by a panel of arbitrators, each side shall jointly nominate their arbitrator to the Secretary-General (art.18(2)). This requires that, as a first step, the parties have to be divided into sides, which is done by the Secretary-General on a preliminary basis. If one side fails to appoint its arbitrator, the Board of VIAC as a general rule appoints the arbitrator for the defaulting side only. The two then move to nominate the chairperson.

However, there may be exceptional situations that enable the Board to appoint all arbitrators, i.e. invalidating the nomination of an arbitrator which was already made by one side. Such exceptional cases could be, e.g. the deliberate misuse of the provision, the considerable disadvantage of one party or when interests within one group of parties are so diverse that it would be inappropriate to force them to agree on a joint arbitrator as well as in joinder scenarios (see Fremuth-Wolf and Schuch, “The New Arbitration Rules of the Vienna International Arbitral Centre (Vienna Rules 2013)” (2013) 16(6) Int. A.L.R. 198, 202; S. Riegler and A. Petsche in *Handbook Vienna Rules* (2014), art.18 mn.12).

If the admissibility of a multi-party arbitration is disputed as such, it is for the arbitral tribunal to decide thereon upon request and after hearing all parties as well as after considering all relevant circumstances (art.18(3)).

#### **Participation or intervention of a third party**

Since 2013, the Vienna Rules have contained a provision regarding the participation or intervention of a third party (art.14). The arbitral tribunal has a wide discretion in ordering joinder of a third person or persons in a pending arbitration, after consultation with all parties (including the person or persons to be joined) and taking into account all relevant circumstances.

Either party or the third party itself may request a tribunal's order for joining a pending arbitration. Under the Vienna Rules, the manner of participation is intentionally left open. The third person can be approved as a party with full party status, but also can receive other statuses, e.g. as an intervening party to support one of the parties to arbitration (*Streitverkündigung*, *Nebenintervenient*) or as an assistant for submission of evidence, but also as *amicus curiae*.

If the request for joinder of a third party is made with a statement of claim, the provisions applicable to the statement of claim (art.7) have to be observed. Depending on who requested the joinder, such requests will be transmitted to all parties of the pending arbitration, or to the other party and the third party to be joined for their comments. If no arbitrator has yet been appointed, the third party may also participate in the constitution of the arbitral tribunal pursuant to art.18.

If the arbitral tribunal refuses to grant a request for joinder of a third party made with a statement of claim, it must return the statement of claim, along with the request for joinder of a third party, to the Secretariat. The Secretariat must then treat such statements of claim in separate proceedings. If the third party participated in the constitution of the arbitral tribunal that subsequently decided not to include that third person then the Board may revoke any confirmed nomination or appointment of arbitrators and order the renewed

constitution of the arbitral tribunal.

Only the tribunal knows all the relevant facts and circumstances and can decide, on a case-by-case basis, whether or not the joinder of a third party should be granted and, if so, is able to determine the manner of such joinder.

As a result, the tribunal has the widest possible flexibility to decide on requests for the joinder of a third party, in order to enable arbitrators to tailor solutions that meet the needs of each particular case (see P. Oberhammer and C. Koller in *Handbook Vienna Rules* (2014), art.14 mn.13 onwards).

### **Consolidation**

The Vienna Rules (art.15) also permit the consolidation of two or more pending proceedings provided that the place of arbitration is identical in all of the arbitration agreements concerned and either the parties agree to the consolidation or the same arbitrator(s) was (were) nominated or appointed. The decision on consolidation will be made by the Board of VIAC after having heard the parties and any arbitrator already appointed and after observing all relevant circumstances, including the compatibility of the arbitration agreements, the links between the cases and the progress already made in the pending arbitral proceedings (see Oberhammer and Koller in *Handbook Vienna Rules* (2014), art.15 mn.9 onwards).

### **Multiple contracts in a single arbitration**

It is undisputed that claims arising out of multiple contracts may be pursued in a single arbitration. The only exception to this rule is provided in relation to counterclaims in art.7a(1) of the Vienna Rules 2001. However, this rule has been abolished by the (new) art.11(1) of the Vienna Rules 2006. Since then, a counterclaim may be made on the basis of an arbitration agreement which provides for the Vienna Rules and which is not necessarily the same agreement the claimant refers to (see C. Liebscher in St. Riegler, A. Petsche, A. Fremuth-Wolf, M. Platte and C. Liebscher (eds), *Arbitration Law of Austria: Practice and Procedure* (New York: Juris Publishing, 2007), p.627).

## **5. COSTS OF THE ARBITRATION**

### **5.1 How do you calculate fees and what are the parties' obligations in this respect? Are arbitrators' fees and the fees of the institution charged on an ad valorem or hourly basis? Do you require a provisional advance or any advance on costs? Is there provision for separate advances on costs?**

The costs of an arbitration conducted under the Vienna Rules will generally consist of (art.44):

- the administrative fees of VIAC;
- the arbitrators' fees;
- any value added tax;
- cash outlay (e.g. travel expenses of arbitrators or tribunal secretaries);
- the costs of some ancillary services such as hearing room rents, overnight courier services, minor cases of court reporting etc;
- the parties' costs, i.e. the reasonable expenses of the parties for their legal representation; and
- other costs such as experts' and interpreters' fees, the costs for verbatim



transcripts, site visits etc.

The administrative costs of the VIAC and the arbitrators' fees are calculated based on the amount in dispute and in accordance with Annex 3 to the VIAC Rules (detailed further below). The other costs are to be determined and fixed by the arbitral tribunal itself.

In addition, on filing a claim or counterclaim, the claimant (or counterclaimant) is obliged to pay into the VIAC account a non-refundable registration fee, calculated based on the amount in dispute. At present, the registration fees range from EUR 500 to EUR 1,500 (Annex 3 to the Vienna Rules). The registration fee is used to cover costs incurred from the filing of the claim until the submission of the file to the arbitral tribunal. Where there are more than two parties to the dispute, the registration fee is increased by 10% for each additional party, up to a maximum increase of 50% (art.10(2)). If the registration fee is not paid, the claim (or counterclaim) will not be forwarded to the respondent (counter-respondent) and the Secretary General may declare the proceedings terminated (art.10(4)).

The arbitrators' fees are calculated on an ad valorem basis with reference to the amount in dispute, according to Annex 3 to the Vienna Rules. It is thus paramount that the statement of claim details the amount in dispute and the number of arbitrators that are to decide the dispute in order for the Secretary-General to calculate the correct advance on costs. For a counterclaim, the administrative costs and the arbitrators' fees are calculated separately, depending on the amount in dispute of the respective counterclaim.

The minimum administrative fee is set at EUR 500, increasing in direct proportion to the amount in dispute and the number of parties to the proceedings. The minimum fee for a sole arbitrator is EUR 3,000 and increases depending on the amount in dispute with a declining costs schedule (i.e. on a diminishing scale). The rates for sole arbitrators are to be raised by 2.5 times the amount quoted in case of an arbitral tribunal. If the case is of particular complexity or the conduct of proceedings was especially efficient the Secretary-General may increase the arbitrators' fees (sole arbitrator and panel of arbitrators) to his or her own discretion up to 40% vis-à-vis the Schedule of Fees (Annex 3); conversely, the Secretary-General may decrease the arbitrators' fees by a maximum total of 40%, in particular for inefficient conduct of proceedings (art.44(7)).

VIAC provides on its website a cost calculator where parties can estimate the costs of arbitration (registration fee, administrative fees, arbitrators' fees) with a given amount in dispute and a given number of arbitrators (available at: <http://www.viac.eu> [Accessed 21 May 2018]). However, the amounts as calculated online do not include VAT on arbitrators' fees and any cash expenses. The actual advance on costs to be paid by the parties will thus be higher than the amount indicated on VIAC's website.

If proceedings under the Vienna Mediation Rules are commenced before, during, or after arbitral proceedings under the Vienna Rules between the same parties and concerning the same subject matter, the administrative fees of the preceding proceedings will be deducted from the administrative fees in the subsequently commenced proceedings and no further registration fee will be charged (art.10(5) and 44(11)).



Article 42(1) provides that the Secretary-General shall fix the amount of the deposit for the advance on administrative and arbitrators' fees against the expected costs. The parties are then requested to pay the deposit in equal shares within thirty days into VIAC's bank account before the file is transmitted to the arbitral tribunal.

If one party's share of any advance is not received or is not received in full within the time limit specified, the Secretary General shall inform the other party(ies) and request it/them to pay the outstanding amount. If this share is not paid within the given time limit, the Secretary General may declare the proceedings terminated (art.34(3) and art.42(3)). This shall not prevent the parties from raising the same claims at a later time in another proceeding.

The obligation of the non-paying party to pay its portion of an advance is not to be discharged because payment of that advance is made by the other party. Indeed, if another party pays a non-paying party's share of the advance in order to keep the arbitration going, it can request the arbitral tribunal to order the non-paying party to reimburse the paying party, to the extent it finds that it has jurisdiction over the dispute (art.42(2)). This means that the paying party can obtain a separate decision on the advance on costs, before the issuance of the final award, and claim the outstanding amount from the non-paying party. This measure is meant to ensure that the parties' stick to their obligation to pay the advance on costs in equal shares at the outset. It shall not affect the arbitral tribunal's authority and obligation to determine the final allocation of costs pursuant to art.37 (see P. Peters in *Handbook Vienna Rules* (2014), art.42 mn.32 onwards).

The advance on costs can be increased by the Secretary-General if the amount in dispute is increased during the course of the proceedings. Until payment of the additional advance on costs, in principle, the arbitral tribunal shall not address the claims that led to the increase or additional advance on costs.

## **5.2 How does your institution address any mandatory local tax requirements, such as in relation to value added or goods and services tax, with respect to the charging and payment of arbitrators' fees?**

The fees listed in Annex 3 to the Vienna Rules do not include VAT, which may apply to the arbitrators' fees (art.44(12)). In order for the Secretary-General to be able to calculate the applicable VAT correctly the arbitrators have to advise of the anticipated tax rate upon accepting their mandate. This is done by completing the forms provided by the VIAC Secretariat, on which the arbitrators declare acceptance of the mandate and advise their bank details (see Heider and Fremuth-Wolf in *Handbook Vienna Rules* (2014), art.44 mn.7).

**5.3 If money is held in advance of arbitration costs, is the interest credited to parties or the institution? What procedures are available if a party is unhappy with the proposed or actual costs? What are the consequences of one party refusing to pay any required advance on costs? Are there any provisions dealing with security for costs?**

Interest earned on advances on costs is not credited to the parties.

If a party is unhappy with the proposed or actual costs, there is no special procedure under the VIAC Rules. In practice, however, if the parties are of the opinion that a deposit has been incorrectly calculated, they may approach the Secretary-General and file a reasoned request for recalculation.

In order to avoid personal financial interests affecting the decision-making process, the power to calculate and fix the final costs of the arbitral tribunal (including any advances on costs) is vested with the Secretary-General (art.42(1) and art.44(2)) and not with the arbitrators. The amount determined by the Secretary-General is communicated to the arbitrators and must be stated in the final award. The arbitrators do not have a right to question or challenge the fixed amount, and instead may only allocate in their final award which party is to bear which share of the costs.

The new Vienna Rules 2018 permit the arbitral tribunal, at the request of the respondent, to order the claimant to provide security for costs if the respondent shows cause that the recoverability of a potential claim for costs is, with a sufficient degree of probability, at risk. The arbitral tribunal shall give all parties the opportunity to present their views before deciding on such a request (art.33(6)). If a party fails to comply with an order by the arbitral tribunal for security for costs, the arbitral tribunal may, upon request, suspend in whole or in part, the proceedings or terminate them (art.33(7) and art.34(2.4)).

The consequences of one party refusing to pay an advance on costs is addressed in s.5.2 above.

## **6. AGREEMENTS TO ARBITRATE**

### **6.1 Does your institution recommend a standard form arbitration clause? If so, please provide details.**

VIAC's recommended model arbitration clause reads (Annex 1 to the Vienna Rules):

“All disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules.”

Optional supplementary agreements exist in relation to:

- (1) the number of arbitrators (one or three) (art.17);
- (2) the language(s) to be used in the arbitral proceedings (art.26);
- (3) the substantive law applicable to the contractual relationship, the substantive law applicable to the arbitration agreement (both art.27), and the rules applicable to the proceedings (art.28);

- (4) the applicability of the provisions on expedited proceedings (art.45); and
- (5) the scope of the arbitrators' confidentiality obligations (art.16(2)).

## **7. INITIATING PROCEEDINGS**

### **7.1 What must a party wishing to commence an arbitration submit to the institution (that is, required documents)? What are the contents of such submission? What are the procedural requirements? Who has responsibility for serving the proceedings, the institution or the initiating party?**

Arbitration proceedings are commenced when the claimant files a statement of claim with the Secretariat of the VIAC (or with an Austrian Regional Economic Chamber) in hard-copy or in electronic form (art.7(1)). The number of hardcopies, including exhibits, has to correspond to the number of arbitrators, parties and the Secretariat (art.12(1)). Upon receipt of the statement of claim, the proceedings become pending. The Secretariat informs the parties of the receipt of the statement of claim.

The statement of claim has to include (art.7):

- (1) the full names, addresses, and other contact details of the parties;
- (2) a statement of the facts and a specific request for relief;
- (3) the monetary value of each individual claim at the time of submission if the relief requested is not exclusively for a specific sum of money;
- (4) particulars regarding the number of arbitrators in accordance with art.17;
- (5) the nomination of an arbitrator if a panel of three arbitrators was agreed or requested, or a request that the arbitrator be appointed by the Board; and
- (6) particulars regarding the arbitration agreement and its content.

If the statement of claim does not contain the above-mentioned points, or if copies of documents or exhibits are missing, the Secretary-General shall request the claimant to remedy the defect or to submit the necessary documents or exhibits, usually within a time limit of 15 days. If the claimant complies with the order to remedy the defect within the set deadline, the statement of claim shall be deemed to have been submitted on the date on which it was first received. If the claimant does not remedy the statement of claim within the deadline set by the Secretary-General, the Secretary-General may declare the proceedings terminated (art.34(3)). This shall not prevent the claimant from raising the same claims at a later time in another proceeding. The Secretary-General may defer service of the statement of claim to the respondent until the claimant has complied with an order to supplement (art.7(4)).

If all necessary requirements are met and all documents are complete, the Secretary General serves the respondent(s) with the statement of claim and a copy of the Vienna Rules and shall invite the respondent(s) to submit an answer to the statement of claim within a period of 30 days. It is the Secretariat and not the initiating party that is responsible for serving the statement of claim on the respondent.

## **8. INTERIM RELIEF**

### **8.1 Are there any provisions dealing with interim relief prior to the formation of the tribunal? Are there any provisions dealing with the appointment of an “emergency arbitrator”?**

There are no provisions dealing with interim relief (including by an emergency arbitrator) prior to the formation of the tribunal; before the formation of the tribunal, parties may apply for interim relief to the courts of any state of competent jurisdiction.

Article 33(5) of the Vienna Rules as well as s.585 of the *Zivilprozessordnung* (ZPO) reinforce that it is not incompatible with an arbitration agreement to apply to the state court for interim relief and for a court to grant such measure. This means, after formation of the arbitral tribunal, the parties have the choice whether to apply to the arbitral tribunal (art.33(1)–(4)) or to the state courts for interim relief. The Secretariat and the arbitral tribunal must be immediately informed of such application and all measures ordered (see G. Zeiler in *Handbook Vienna Rules* (2014), art.33 mn.6 onwards).

The 2018 Vienna Rules did not introduce provisions in relation to the appointment of an emergency arbitrator, despite other competing institutions have done so in the past. For VIAC, this area is still seen as grey with many open questions especially with respect to the enforcement of such decisions under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). VIAC is, however, closely monitoring the market and any developments in this respect. In urgent cases, the parties should therefore resort to the state courts until an arbitral tribunal has been appointed (see Zeiler in *Handbook Vienna Rules* (2014), art.33 mn.3).

## **9. SELECTION / APPOINTMENT / CHALLENGE OF ARBITRATORS & TRIBUNAL SECRETARIES**

### **9.1 How are arbitrators appointed? Are there any requirements as to the number of arbitrators? How is their independence and availability ensured? Are there any restrictions placed on the nationality of arbitrators? What is the procedure with respect to sole arbitrators, co-arbitrators and the selection of the chairman?**

Under the Vienna Rules, the parties “nominate” arbitrators. Such nomination is subject to later confirmation by the VIAC. Only where the parties fail to nominate an arbitrator (co-arbitrator or sole arbitrator) will the Board of VIAC make an “appointment”. Thus, whenever it is a party choosing an arbitrator, the Vienna Rules refer to “nomination” whereas when it is VIAC choosing the arbitrator, the Rules refer to “appointment”.

The appointment/nomination procedure is set out in arts 16 onwards.

#### **Number of arbitrators**

The parties are free to agree that their dispute is to be decided either by a sole arbitrator or by an arbitral tribunal consisting of three arbitrators. They are also free, in principle, to agree on the procedure for constituting the arbitral tribunal but should be cautious not to deviate from the Vienna Rules too severely. Otherwise, the Board of VIAC can refuse to carry out proceedings (art.1(3)) if, due to the discrepancies, the case cannot be

administered “in the spirit of the rules” (W. Melis, “Function and Responsibility of Arbitral Institutions” (1991) XIII *Comparative Law Yearbook of International Business* 113; Rechberger and Pitkowitz in *Handbook Vienna Rules* (2014), art.7 mn.20 onwards).

When no such agreement has been made and the parties do not agree on the number of arbitrators, the Board of VIAC has discretion to determine whether the dispute is to be decided by a sole arbitrator or by an arbitral tribunal, taking into consideration in particular the difficulty of the case, the magnitude of the amount in dispute and the interest of the parties in an expeditious and cost-effective decision (art.17(2)).

### **Sole arbitrator**

If the dispute is to be decided by a sole arbitrator, the parties must agree on a sole arbitrator and indicate that person’s name and address within 30 days upon receipt of a request to the Secretary-General. The parties are completely free in choosing the arbitrator: there are no special requirements on nationality or being part of a list.

If no such agreement is reached within that period, the sole arbitrator shall be appointed by the VIAC Board (art.17(3)). There is no time limit for such appointment but it is usually carried out without undue delay within one to three weeks. The Board convenes every four to six weeks and always decides as plenum, there are no special appointing or challenge committees within the Board (see Annex 2 for further details on the bylaws of the Board and their decision-making).

There are no specific criteria that the Board should take into account when appointing an arbitrator but it follows from art.7 that the nationality of the parties, as well as any experience in the field of the dispute, have to be taken into account.

### **Arbitral tribunal**

If the dispute is to be decided by an arbitral tribunal, each party has to nominate an arbitrator. Usually, this is already done in the statement of claim and the answer to the statement of claim, and the parties are bound by their nomination as soon as the nominated arbitrator has been confirmed by the Secretary-General or by the Board (art.17(6)). Any party that has not nominated an arbitrator shall be requested to indicate the name and address of an arbitrator within 30 days after service of the request. If the party has not nominated an arbitrator within that time limit, the arbitrator will be appointed by the VIAC Board (art.17(4)) in accordance with the procedure outlined above for the VIAC Board’s appointment of sole arbitrators.

The two party-appointed arbitrators (or arbitrators appointed by the Board) then nominate a chairperson and indicate his/her name and address within thirty days after service of the request. If no such indication is made within that period, the chairperson shall be appointed by the Board (art.17(5)).

### **Nationality of arbitrators**

The Vienna Rules do not contain a rule expressly stating whether, and to what extent, the nationality of an arbitrator is of relevance to his/her appointment. Parties may choose an arbitrator of their choice, irrespective of

his/her nationality.

In the event that the VIAC Board is appointing an arbitrator, it will consider the arbitrator's nationality in its decision. Usually, a "neutral" arbitrator will be appointed as a sole arbitrator or chairperson, meaning an arbitrator of a different nationality than that of the parties (Riegler and Petsche in *Handbook Vienna Rules* (2014), art.16 mn.18 onwards).

### **Impartiality and independence of arbitrators**

The impartiality and independence of arbitrators is a fundamental principle of Austrian law. It extends to all members of the arbitral tribunal and cements the importance of reaching an unbiased decision.

Once an arbitrator is nominated by the parties, or suggested for appointment by the VIAC Board, he or she is requested to sign a written statement of acceptance confirming availability, impartiality and independence. This form constitutes the private law contract between the arbitrators and the parties (see Schwarz and Konrad, *The Vienna Rules* (2009), para.7-041; Riegler and Petsche in *Handbook Vienna Rules* (2014), art.16 mn.6 onwards) and is transmitted to the parties by the Secretary-General. It reads in its current version (January 2018):

"I am impartial and independent and will remain impartial and independent for the duration of the proceedings. To the best of my knowledge and after conclusion of a proper investigation, there are no circumstances known to me which would have to be disclosed pursuant to Art.16 para.4 Vienna Rules or which would justify a challenge to my mandate as arbitrator pursuant to Art.20 Vienna Rules."

This means that arbitrators who consider themselves to be independent and impartial must still disclose any circumstances likely to give rise to doubts about such matters in the eyes of a reasonable person or that are in conflict with the agreement of the parties. This obligation continues throughout the proceedings. Austrian case law on impartiality and independence indicates that the same principles that hold true for state court judges apply (ss.19–20 JN; C. Liebscher and A. Fremuth-Wolf (eds), *Arbitration Law and Practice in Central and Eastern Europe* (New York: Juris Publishing, 2006), para.AUS-36): e.g. when the arbitrator was a party to, or had a direct interest in, the dispute at hand (comparable to the red list in the International Bar Association (IBA) *Guidelines on Conflicts of Interest in International Arbitration* (2004; revised in 2014)).

Article 16(2) adds that the arbitrators must perform their duties in complete independence and impartiality, to the best of their ability, and not subject to any outside instruction. They have the duty to keep confidential all information acquired in the course of their duties (see Riegler and Petsche in *Handbook Vienna Rules* (2014), art.16 mn.15 onwards).

A failure to disclose relevant facts may lead to the challenge of the arbitrator, setting aside of the award and even entail liability of the arbitrator.

### **Confirmation of arbitrators**

After an arbitrator has been nominated, has accepted the mandate and has signed the above-mentioned statement of acceptance, the Secretary-General

shall forward a copy of that statement to the parties who may comment on it. The Secretary-General shall confirm the nominated arbitrator, if no doubts exist as to the impartiality or independence of him or her or his or her ability to carry out his/her mandate. The Secretary-General shall inform the Board of such confirmation at the next meeting of the Board. If deemed necessary, the Secretary-General may pass on the decision to the Board which shall decide whether to confirm a nominated arbitrator (art.19(2)). Upon confirmation, the nominated arbitrator shall be deemed appointed.

If the Secretary-General or the Board refuses to confirm a nominated arbitrator, the Secretary-General shall request the party/parties entitled to nominate the arbitrator, or the co-arbitrators, to nominate a different arbitrator or chairperson within 30 days. If the Secretary-General or the Board again refuses to confirm the newly nominated arbitrator, the right to nominate shall lapse and the Board shall appoint the arbitrator.

**9.2 What are the procedures for mounting challenges, including when and how and the parties may submit objections and how arbitrators' appointments can be challenged after the event? How can arbitrators be replaced once removed/unable to continue with the appointment? Does the institution publish arbitrator challenge decisions?**

According to art.20, read together with s.588(2) of the ZPO, arbitrators may be challenged only if circumstances exist that give rise to justifiable doubts as to their impartiality or independence, or that are in conflict with the agreement of the parties. A party may challenge an arbitrator nominated by it, or in whose nomination it participated, only for reasons of which it becomes aware after the nomination or participation in the nomination.

If a party challenges an arbitrator, it must submit the challenge to the Secretary-General within 15 days from the date it first became aware of the ground for the challenge. The challenge shall specify the ground for the challenge and include corroborating evidence. If a party fails to challenge an arbitrator in a timely manner, it forfeits its right to challenge the award at a later stage on the grounds that a biased arbitrator had participated in the decision-making (s.611(2)(4)–(5) of the ZPO; see Horvath and Trittmann in *Handbook Vienna Rules* (2014), art.20 mn.17 onwards).

Should the challenged arbitrator not withdraw voluntarily from his or her office, the VIAC Board must decide upon the challenge on the basis of the particulars in the challenging motion and the evidence attached thereto. Before the Board makes its decision, the Secretary-General must obtain the comments of the arbitrator that is being challenged and of the other parties. The Board can also request comments from other persons.

A decision of the VIAC Board rejecting a challenge may be appealed directly to the Austrian Supreme Court under s.589(3) of the ZPO, a mandatory provision of Austrian civil procedural law. The appeal must be filed by the party within four weeks after having received the VIAC Board's decision. This decision is final and binding and not subject to further appeal (Schwarz and Konrad, *The Vienna Rules* (2009), para.16-047 onwards).

A challenged arbitrator may continue the arbitral proceedings while the challenging motion is pending. However, an award may not be rendered until



after the final and binding decision of the VIAC Board on the challenge.

If an arbitrator has been successfully challenged, a new arbitrator has to be appointed according to the previously applicable appointment provision of art.17 (see above) within a 30-day time limit. If no such appointment is made within the 30-day period, the appointment is made by the VIAC Board.

If the substitute arbitrator nominated is also successfully challenged, the right to nominate a new arbitrator lapses and the new arbitrator must be appointed immediately by the Board.

The substitute arbitrator or the newly constituted arbitral tribunal has the power and discretion to decide—after having sought the comments of the parties—whether and, if so, to what extent, previous procedural stages are to be repeated (art.22(2); Horvath and Trittman in *Handbook Vienna Rules* (2014), art.22 mn.12 onwards).

VIAC takes the quest for transparency seriously, while also trying to protect the integrity of the process and the arbitrator's interests. Thus, the former Secretary-General of VIAC, Manfred Heider, has analysed various anonymised arbitrator challenge decisions during 2001–14 in an article “Die Ablehnung von Schiedsrichtern in Verfahren vor dem Internationalen Schiedsgericht der Wirtschaftskammer Österreich” (2014) *Festschrift Schütze* 181. This article provides a very good overview into the practice of the VIAC Board's decisions in this area.

Since September 2017, VIAC has published the names of arbitrators acting in VIAC cases—another measure designed to enhance transparency in relation to the appointment procedure. In its annual statistics, VIAC reveals general data regarding its arbitrators, such as nationality, the number of arbitrators appointed by the parties and the Board, their gender etc (this information is publicly available on VIAC's website).

### **Monitoring and improving the performance of arbitrators**

VIAC's Secretariat keeps mirror files of all pending proceedings and watches their progress closely. If an arbitral tribunal remains inactive for a sustained period without obvious good reason, the Secretariat will ex officio request the arbitral tribunal to justify the delay and explain what further steps will be taken in order to continue with the proceedings. The Secretary-General may also decrease the arbitrators' fees in extreme cases (art.44(7)).

In addition, according to art.21(2), any party may request the termination of the mandate of an arbitrator who fails to perform his/her duties or unduly delays the proceedings. The competent body to decide is the VIAC Board. The Board may also remove an arbitrator from its office of its own volition if it is apparent that any incapacity is not merely temporary or that an arbitrator is not fulfilling his/her duties. This does not happen frequently, but has been used in the past as a measure of last resort.

### **9.3 What is your institution's policy on the appointment of tribunal secretaries and payment of their fees?**

The Vienna Rules 2018 and the new *Guidelines for Arbitrators* (2018) now deal with the issue of tribunal secretaries expressly. If the arbitral tribunal intends to nominate a tribunal secretary, it shall inform the parties of this intention, the name and contact information of the proposed person, the

costs implications according to art.44(1) (i.e. no separate fees for the administrative secretary may be charged but the parties will have to bear the expenses such as travel and subsistence costs) and shall also submit a *curriculum vitae* together with a declaration of impartiality and independence of the proposed secretary. The name, contact information and declaration of impartiality and independence of a proposed tribunal secretary shall also be submitted immediately to the Secretariat.

The parties shall be granted the opportunity to comment on the proposed candidate.

The arbitral tribunal is not permitted to allocate responsibility to the tribunal secretary for tasks that are genuinely reserved to the arbitral tribunal. Examples would include the actual decision-making and drafting of the award.

The parties shall not be charged any fees for work completed by a tribunal secretary, with the exception of reasonable expenses which shall be paid by the parties (art.44(1.1)). The tribunal secretary is therefore not entitled to receive any fees out of the advance on costs; any such payment of fees shall be made by the arbitral tribunal out of the arbitrators' fees.

## **10. RESOLUTION OF JURISDICTIONAL ISSUES/SUMMARY DISMISSAL**

### **10.1 Does the institution play a role in determining jurisdictional disputes? How does the role of the institution interplay with the role of the tribunal and the national courts in this regard?**

#### **Role of VIAC in determining the jurisdiction of the institution and the arbitral tribunal**

Pursuant to art.7(2) of the Vienna Rules, the statement of claim must include particulars regarding the arbitration agreement and its content. Unlike other rules, the Vienna Rules do not contain a specific provision dealing with the prima facie scrutiny of the institution's jurisdiction and there is no specific procedure for such scrutiny.

The former president of VIAC, Werner Melis, has described a negative test that is to be performed by the institution (Melis, "Function and Responsibility of Arbitral Institutions" (1991) XIII *Comparative Law Yearbook of International Business* 113):

"[VIAC should] refuse to accept a case if the claimant is unable to produce a document which is, at least, of such nature as to indicate that the jurisdiction of the institution is not impossible."

Thus, if the claimant fails to provide any jurisdictional basis for the dispute and the institution's jurisdiction seems "impossible", it is the practice of the Secretary-General to inform the claimant that it intends to refuse to accept the case. If the claimant insists, it may still forward the case to the arbitral tribunal (see Rechberger and Pitkowitz in *Handbook Vienna Rules* (2014), art.7 mn.13 onwards). VIAC itself does not have the power to determine the jurisdiction of the institution; this lies within the competence of the arbitral tribunal (*Kompetenz-Kompetenz*) and is subject to judicial control.

### **Interplay with the institution's role vis-à-vis the role of the arbitral tribunal and national courts**

According to art.24, it is the arbitral tribunal who has the *Kompetenz-Kompetenz* to rule on its jurisdiction. Any plea that the arbitral tribunal lacks jurisdiction must be raised no later than at the stage of the first pleadings. A party is not precluded from raising such a plea by the fact that it has nominated, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of authority arises during the arbitral proceedings. In both situations, a later plea will not be permitted; if the arbitral tribunal however considers the delay justified, the plea can be admitted.

A ruling on jurisdiction can be made together with a ruling on the merits or by separate (partial) arbitral award. If a separate award is rendered, it may be challenged in the state courts within three months upon receipt of such award on jurisdiction (s.592 together with s.611(2)(1) of the ZPO). If contained in the final award, that award may also be challenged for lack of jurisdiction. The Austrian Supreme Court always has the last word regarding the jurisdiction of the arbitral tribunal.

The interplay between courts and arbitral tribunals is laid down in s.584(1) and (3) of the ZPO and provides that a court before which an action is brought in a matter which is the subject of an arbitration agreement shall reject the claim, unless the defendant makes submissions on the substance of the dispute or orally pleads before the court without making an according objection. This shall not apply if the court establishes that the arbitration agreement does not exist or is incapable of being performed. While such proceedings are pending before a court, arbitral proceedings may nevertheless be commenced or continued and an award may be made. Once arbitral proceedings are pending, no further action may be brought before a court or an arbitral tribunal concerning the asserted claim; an action brought because of the same claim shall be rejected. This shall not apply if an objection to the jurisdiction of the arbitral tribunal was raised with the arbitral tribunal, at the latest, when entering into argument on the substance of the dispute and a decision of the arbitral tribunal thereon cannot be obtained within a reasonable period of time.

### **10.2 Are there any provisions for the summary dismissal of arbitral claims?**

According to art.1(3) of the Vienna Rules, the Board may refuse to administer the proceedings if the arbitration agreement deviates fundamentally from, and is incompatible with, the Vienna Rules. This is to ensure that cases can be refused in exceptional cases, if there are severe deviations from the Vienna Rules which would make them impossible to administer according to VIAC's standards. In practice, this has very rarely happened and VIAC is very hesitant in refusing to accept a case (see Rechberger and Pitkowitz in *Handbook Vienna Rules* (2014), art.7 mn.20 onwards).

## **11. TYPICAL AND/OR REQUIRED PROCEDURES**

### **11.1 In brief, what are the key documents which must be filed by the parties (e.g. request for arbitration, defence, reply) and the timescales for filing them?**

The claimant must file hard-copy versions of the statement of claim in sufficient copies—one for each arbitrator, each party and the Secretariat with the Secretariat (art.12(1)) together with an electronic version. A statement of claim has to contain the information set out in s.7.1 above. Upon service of the statement of claim by the Secretariat, the respondent has to file an answer to the statement of claim with the Secretariat in electronic form within a period of 30 days. The answer must contain (art.8):

- (1) the full name, address, and other contact details of respondent;
- (2) comments on the facts upon which the statement of claim is based as well as respondent's request for relief;
- (3) particulars regarding the number of arbitrators in accordance with art.17; and
- (4) the nomination of an arbitrator if a panel of three arbitrators was agreed or requested, or a request that the arbitrator be appointed by the Board.

Failure or delay or defects in submitting an answer to the statement of claim does not entail express sanctions. The proceedings will simply continue and an arbitrator may be appointed on behalf of the respondent (art.17). After its constitution, the arbitral tribunal may continue without the respondent's participation and may render an award on the basis of and after weighing the evidence submitted but without holding Claimant's submissions as truth (art.29(2)). Thus, there is no default judgement in the strict sense of s.396 of the Austrian Civil Procedural Code. The defaulting respondent will be informed of all steps taken by the arbitral tribunal and has the right to participate even at a later stage, but only before the formal closure of the proceedings (see F. Haugeneder and P. Netal in *Handbook Vienna Rules* (2014), art.29 mn.18 onwards).

Usually at the outset of the proceedings together with the PO1, the tribunal in consultation with the parties determines the procedural calendar wherein the number and due dates of submissions (in parallel or in consecutive order), the oral hearing and post-hearing briefs (if any) are fixed. Parties and tribunals enjoy great flexibility in this respect and may vary the number and order of their briefs according to the particularities of the case.

### **11.2 How is the procedural timetable established? What written submissions/memorials are typically required? What are the general rules with respect to document production and hearings, and the typical length of proceedings?**

#### **Procedural timetable**

The Vienna Rules do not contain any explicit rules on mandatory procedural timetables or preparatory case management. It is up to the arbitral tribunal to establish a procedure that is fit for the case at hand. It is very common, however, that a procedural timetable is established at the outset. See also s.11.1 above for further details on the number of submissions.

### **Written submissions**

There are also no special rules on the form and content of written submissions. It is up to the arbitrators to decide—subject to any contrary agreement by the parties—whether written briefs are to be submitted sequentially, simultaneously and how many are to be exchanged. This largely depends on the complexity of the case.

With respect to communication with the VIAC Secretariat, art.12(2) provides that the Secretariat of VIAC shall receive all written communications between the arbitral tribunal and the parties in electronic form only. This is due to the implementation of VIAC's electronic case management file; the only exceptions are the statement of claim and the arbitral award (see ss.7.1, 12, 16.1 and 16.3).

### **Document production**

There are also no special rules on document production in the Vienna Rules.

Generally, Austria is a civil law jurisdiction and thus the parties are required to present to the state court upon commencement of the proceedings all the facts and documents necessary to support their case. It is the party's own obligation to produce all relevant evidence. It is not necessary for a party to disclose to the opposing party documents that may be harmful to its own case.

According to art.29 of the Vienna Rules, the arbitrators have full discretion in establishing the facts of the case and the taking of evidence in order to best reflect international practice. If deemed necessary the arbitrators may, on their own initiative, collect evidence and, in particular, question parties and witnesses, request parties to submit documents or visual evidence and call in experts. This entails also the right to weigh the evidence (see Schwarz and Konrad, *The Vienna Rules* (2009), para.20-178).

Since the arbitral tribunal is not vested with coercive powers, it cannot force a party to produce ordered documents. However, where a party fails without good cause to produce any document despite being ordered to do so by the arbitral tribunal, the tribunal may make adverse inferences in the course of its evidentiary deliberations. The arbitral tribunal may also, at its discretion, seek court assistance in the taking of evidence (s.602 of the ZPO; see Schwarz and Konrad, *The Vienna Rules* (2009), para.20-250 onwards; Haugeneder and Netal in *Handbook Vienna Rules* (2014), art.29 mn.3 onwards).

### **Hearing**

The arbitral tribunal has discretion to decide whether to conduct an oral hearing or not; thus documents-only proceedings are permitted (art.30). It is, however, common practice that in international proceedings an oral hearing is conducted. If the parties request that an oral hearing takes place then the tribunal must hold one.

It is for the sole arbitrator or the chairperson to fix the date of the hearing, which shall be private (art.30(2)).

### **Length of proceedings**

The median duration of proceedings is currently 12.5 months (from receipt of the claim by the Secretariat to the service of the award on the parties).

## **12. AWARDS**

### **12.1 Are there any time limits for the rendering of awards? What scope of awards are available (for example, interim, partial, final)? Is there a process for scrutiny of the tribunal's award by the institution and its internal bodies?**

#### **Time limits**

As soon as the arbitral tribunal is convinced that the parties have had an adequate opportunity to make submissions and to offer evidence, the arbitral tribunal shall declare the proceedings closed as to the matters to be decided in the award, and shall inform the Secretary-General and the parties of the anticipated date by which the final award will be rendered (art.32). Although there are no express time limits for the rendering of an award under the Vienna Rules, the majority of awards are rendered within one year from the filing of the statement of claim. An exception to this rule applies when the parties have agreed on expedited procedure. In such case the arbitral tribunal shall render a final award within six months of transmission of the file, unless the proceedings are prematurely terminated. If he/she deems it necessary, the Secretary-General may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own. The Secretary General may also decrease the arbitrators' fees in extreme cases of delay (art.44(7)).

With respect to the scope of awards available, all kinds of awards such as final, partial and interim awards can be rendered by arbitral tribunals acting under the auspices of the Vienna Rules.

A final award disposes of all the issues on the merits, jurisdiction and costs raised in arbitration in a final and binding manner, and thus ends the arbitral proceedings.

#### **Distinction between final, partial and interim awards**

The distinction between partial and interim awards is not always easy. While "interim" awards are seen to be of a preliminary nature and may thus not be declared enforceable in courts, partial awards are final rulings on a distinct issue, e.g. jurisdiction, applicable law or quantification of damages. Such awards can be enforced (see Schwarz and Konrad, *The Vienna Rules* (2009), para.27-024 onwards). It does not depend on the labelling, but on the content of an award, whether it is to be considered partial, interim or final.

With respect to jurisdiction, art.24 explicitly provides that the arbitral tribunal may rule on its own jurisdiction, either together in the final award or by a separate award. Such (partial) award may then be separately challenged under Austrian law directly at the Austrian Supreme Court (s.592 together with s.611(2)(1) of the ZPO) within three months upon receipt of the award.

#### **Scrutiny of awards**

There is no scrutiny of partial, interim or final awards by the institution expressly enshrined in the Vienna Rules. It is, however, standard practice that the Secretary-General or their Deputy when receiving an award from the arbitrators reviews it and if major discrepancies or irregularities are detected, the arbitrators will be contacted prior to the award being served on the parties.

### **Notifications of awards to parties**

According to art.36 of the Vienna Rules, the award shall be served on the parties by the Secretary-General in hard-copy form (art.12(3)). Upon request of a party, the award may also be sent to the parties in electronic form. Awards become effective upon service of the copies. One copy of the award and the documentation of proof of service are retained by the Secretariat.

Awards shall be in writing, signed by all arbitrators (a majority of arbitrators suffices in case of refusal or if prevented by an obstacle that cannot be overcome within a reasonable period of time) and include the reasons for the award unless all parties have agreed that no grounds are to be stated.

All copies of the award are confirmed as awards of VIAC with the signature of the Secretary-General and the stamp of VIAC. With this it is confirmed that the award is an award of the International Arbitral Centre of the Austrian Federal Economic Chamber and that it was made and signed by (an) arbitrator(s) nominated or appointed in accordance with these rules of arbitration.

The sole arbitrator or chairperson of an arbitral tribunal, or, if he or she is prevented, another arbitrator or, in case of their hindrance, the Secretary-General shall confirm on all copies the finality and enforceability of the award at the request of a party.

### **Corrections of awards**

According to art.39, each party may, within 30 days of receipt of the award (be it partial, final, jurisdictional or on the merits), file with the Secretariat the:

- application to correct any errors in computation, any clerical or typographical errors or any errors of a similar nature. These errors may also be corrected by the arbitral tribunal on its own initiative within 30 days of the date of the award;
- application to clarify specific parts of the award (see F. Schäfer, M. Schifferl and V. Wong in *Handbook Vienna Rules* (2014), art.39 mn.8 onwards); or
- application to render an additional award as to claims presented in the arbitral proceedings but not resolved in the award—this supplementation of an award may also be issued by the arbitral tribunal on its own initiative within 30 days of the date of the award.

The decision on such an application is made by the arbitral tribunal. Prior to making a decision upon such an application, other party(/ies) will be heard. The arbitral tribunal shall determine a time period for that purpose, which should not exceed 30 days.

## **13. CONFIDENTIALITY**

**13.1 What are the rules as to confidentiality of the work of the institution, the materials generated during the proceedings, the documents and evidence produced and the award rendered by the tribunal? What are the duties of confidentiality of the parties, the institution members and staff and that of the arbitrators?**

The concept of confidentiality is highly recognised and reflected in various provisions: the Board of VIAC (art.2(4)), the Secretary-General (art.4(4)) and



the arbitrators (art.16(2)) are all under a duty to keep confidential all information acquired during the course of the arbitration proceedings.

There are no special provisions regarding the duties of confidentiality of the parties in the Vienna Rules (see Fremuth-Wolf in Riegler, Petsche, Fremuth-Wolf, Platte and Liebscher, *Arbitration Law of Austria* (2007), Ch.3, pp.670 onwards). If this is of importance to the parties, they are well advised to include a provision on this issue in their arbitration agreement or to conclude a separate confidentiality agreement.

With respect to the publication of awards, VIAC is entitled to publish an award in legal journals or in its own publications in an anonymous format unless publication is objected to by at least one party within 30 days after service of the copy of the award (art.41). As a tribute to VIAC's 40th anniversary in 2015, the VIAC Secretariat published a compilation of abstracts (*Selected Arbitral Awards*, Vol.1) of more than 60 landmark awards with annotations thereto made by outstanding arbitral experts. The abstracts may be ordered online or from the VIAC Secretariat. A second volume is planned due to the great success of the first volume.

## **14. INSTITUTIONAL ADVANTAGES**

### **14.1 What are the main advantages and strengths of the institution? Are there any other unique institutional features which make arbitrating under its auspices more attractive relative to other similar service providers?**

The main advantages are the following.

#### **Experience**

There have been more than 1,600 successfully administered arbitral proceedings since VIAC's foundation in 1975.

#### **Quality**

- Leading arbitrators from all over the world sit on tribunals under the Vienna Rules; and
- the VIAC's Board and Secretariat administer the proceedings to the highest level of quality.

#### **Custom-tailored arbitrations**

- The conduct of proceedings can be freely determined by the arbitral tribunal to meet the parties' needs and wants;
- free choice of arbitrators is permitted; and
- parties are also free to choose the language of the proceedings and of the applicable law on the merits.

#### **Vienna is the preferred venue in Central and Eastern Europe**

- The legal framework is modern, arbitration friendly and based on the UNCITRAL Model Law on International Commercial Arbitration 1985;
- the Austrian Supreme Court is the court of first and last instance for claims setting aside an arbitral award or for challenging an arbitrator;
- interim measures of protection issued by arbitral tribunals are immediately enforceable by Austrian courts;
- Austrian courts support and assist before or during arbitral proceedings

where needed;

- Austria, as a neutral country, is a well-established meeting point for business and governments; and
- Vienna is the most important hub for public transport in the region and offers superb hotels and restaurants at a reasonable price.

**VIAC offers the following ancillary services:**

- Organisation of hearing and breakout rooms in AFEC's hearing centre;
- rental audio and video equipment;
- assistance with further logistical organisation, e.g. identifying and obtaining court reporters or interpreters; and
- in-house luncheons and catering services.

**Arbitration under the auspices of the Vienna Rules offers an excellent cost/performance ratio**

- There is a binding schedule of fees and thus predictable costs;
- fees of arbitrators and administrative services are modest in comparison to other institutions; and
- the new opt-in system for fast-track proceedings guarantees even swifter awards at lower costs.

**VIAC provides a link between academic research and legal practice**

- VIAC has a close link with the Austrian Arbitration Association and is a recognised partner for Austrian and foreign law schools;
- VIAC is a founding partner of the “Willem C. Vis International Arbitration Moot” which is the leading competition of law students in arbitration; and
- VIAC together with the IBA and with support of ELSA Austria organises the First IBA–VIAC Mediation and Negotiation Competition in July 2015.

## **15. OTHER DISPUTE RESOLUTION SERVICES**

### **15.1 Are there any other mediation, expert determination or alternative dispute resolution services offered by your organisation?**

VIAC offers administration of mediation, conciliation and other ADR proceedings as part of its services and, since 2016, has a separate set of mediation rules that can be used for other forms of ADR proceedings. Those rules now form Pt II of the VIAC Rules (available at: <http://www.viac.eu/en/mediation-en/mediation-en> [Accessed 21 May 2018]).

The applicable procedure is similar to that existing for arbitration proceedings, i.e. in relation to the initiation of proceedings, calculation of advances of costs, assistance in the appointment of an appropriate mediator, monitoring function, determination of costs at the end of the mediation. The mediator's fees are not based on a fixed fee schedule but are an hourly rate approved by VIAC.

Once the file is transferred to a mediator, the Vienna Mediation Rules leave significant flexibility with respect to the conduct of the proceedings. Upon receipt of the file, the mediator shall promptly discuss with the parties the manner in which the proceedings shall be conducted, in order to assist the

parties in finding an “acceptable and satisfactory solution” for their dispute.

As confidentiality is crucial in mediation, art.12 of the Vienna Mediation Rules contain detailed provisions not only in relation to the mediator and the parties, but also any other person taking part in the proceedings; all such individuals are required to treat as confidential anything that has come to their attention in connection with the proceedings and that would not have come to their attention had the proceedings not taken place. In addition, any written documents that were obtained during the proceedings and would otherwise not have been obtained must not be used in subsequent judicial, arbitral or other proceedings. Finally, any statements, views, proposals or admissions made during the mediation, as well as one party’s willingness to settle the dispute amicably, shall remain confidential.

Mediation proceedings under the Vienna Mediation Rules are formally terminated by an act of the Secretary-General, i.e. a written confirmation upon occurrence of the earliest of certain circumstances:

- an agreement of the parties for the settlement of the entire dispute;
- the notification in writing by any party that it does not wish to continue the proceedings, provided that at least one session with the mediator has taken place, or that no such session has taken place within two months of the mediator’s appointment, or that the time frame agreed for the proceedings has expired;
- the notification in writing by the mediator that the proceedings will, in his/her opinion, not resolve the dispute between the parties;
- the notification in writing by the mediator that the proceedings are terminated; and/or
- the notification in writing by the Secretary General regarding the failure to appoint a mediator or to comply with a payment order regarding the registration fee or advances on costs.

Upon termination, the Secretary General will calculate the administrative fees, mediator’s fees and expenditures and fix these (art.8(5) of the Vienna Mediation Rules). Any remaining amounts will be refunded to the parties according to the payment of the advances or any other agreement the parties might have reached in this connection.

In addition, parties also benefit from a one-stop-shop feature when using the VIAC Rules in that they are also able to combine arbitration and mediation proceedings under VIAC’s auspices known as Arb-Med-Arb. This refers to any combination of proceedings whereby mediation is initiated during or following arbitration. It has received much attention recently due to parties’ wishes to reach an amicable solution in the course of arbitral proceedings. VIAC offers the possibility to obtain an enforceable award in such scenarios if the parties first initiate arbitration under the Vienna Rules and appoint an arbitrator to whom the file is transferred. Should the parties then wish to resort to mediation, the arbitral proceedings may be stayed for the duration of the mediation proceedings (it is recommended to have a fixed time limit as it avoids uncertainties with regard to grounds for termination of arbitral proceedings as defined in art.34). No separate fees (neither registration nor administration fees) will be charged by VIAC for the mediation proceedings (art.44(11)). The mediator is to be remunerated separately based

upon an approved hourly or daily fee. If the parties were able to settle their dispute by mediation in whole or in part, the arbitration may be continued upon request of the parties and the arbitral tribunal may render an arbitral award on agreed terms (art.37(1)) or simply record the settlement (art.37(2)) and end the arbitration proceedings. If the mediation was not successful, the arbitral proceedings may be continued and the arbitral tribunal renders an award (art.36).

VIAC also acts as appointing authority in ad hoc proceedings (see s.3 above) and may also be called upon to appoint experts (see Annex 4). A flat fee of EUR 2,000 will be charged for such a request.

## **16. RECENT DEVELOPMENTS**

### **16.1 What recent developments are particularly relevant to arbitrations conducted under your institution's rules?**

The new version of the VIAC Rules which entered into force on 1 January 2018 took care of recent developments in the market by introducing, inter alia, the following new features into the well-established 2013 version of the rules:

- the possibility for VIAC to administer purely domestic cases (art.1(1));
- an electronic case management system to administer all matter from 1 January 2018 (see s.16.3 below);
- security for costs to be requested by respondent (art.33(6)–(7));
- conduct of the proceedings in an efficient and cost-effective manner (matters which are taken into consideration in determining the arbitrators' fees/costs (art.38(2));
- greater flexibility for the Secretary-General when determining the arbitrators' fees (art.44(7)); and
- (re-)appointment of members of the Board has become more flexible (Annex 2; art.2).

The issue of third-party funding was discussed as part of the revisions to the Vienna Rules but no provision has yet been incorporated; we are carefully monitoring any developments in this respect.

We are currently working on sector specific model clauses, such as post-hoc mergers and acquisitions (M&A) and competition disputes, art disputes and space law disputes.

### **16.2 In light of their increasing use, how does your institution address situations where one of the parties to an arbitration, or an arbitrator, is subject to sanctions or similar prohibitions or restrictions under the laws of one or more countries?**

VIAC is taking this issue very seriously and has established a working group to deal with sanctions and other restrictions, taking note of other institutions' approaches. VIAC's policy in this respect will be announced in due course.

### **16.3 Has the institution committed to any diversity pledges or other institutional best practices?**

Alice Fremuth-Wolf, the current Secretary-General of VIAC, is one of the steering committee members of the Equal Representation in Arbitration Pledge and has been involved in this initiative from its initial conception.

VIAC has taken a very active role in promoting gender diversity. Indeed, the new VIAC Rules 2018 contain an explicit provision in art.6(2) that, to the extent the terms used in the Vienna Rules refer to natural persons, the form chosen shall apply to all genders. In practice, the terms in these rules shall be used in a gender-specific manner. This is a small step, but has been very efficient in practice in our correspondence with parties and arbitrators. It is also VIAC's policy to have female speakers on all seminars and conferences organised by the institution. When appointing arbitrators, we make sure that the short list contains male and female candidates, with the final decision depending on objective criteria as to who is best suited to the specific case. When selecting interns, VIAC tries to support young female graduates to give them a chance to make their way into the arbitration world.

In order to improve transparency and increase the number of female appointments, as of 1 September 2017 VIAC has published the names of arbitrators acting in current proceedings. The list is updated regularly and provides information on the appointment method, i.e. if the arbitrator has been appointed by the Board of the VIAC or nominated by the parties/co-arbitrators, and the date when the case file was handed over to the respective arbitrator. It also shows if the case is still pending or if an arbitrator's office was prematurely terminated without stating the reasons. This is an important step to show that diversity is being promoted at an institutional level when selecting arbitrators. As a result, we have seen our first all-female arbitral tribunal in 2018.

To honour our efforts, VIAC was recently awarded the *Global Arbitration Review* (GAR) award for the regional centre that impressed most in 2018. We will continue our efforts in this respect.

Finally, the VIAC Rules introduced a new electronic case management system as of 1 January 2018. This system provides for the electronic submission of statements of claim, requests for mediation, all written communications between the arbitral tribunal and the parties and the final (unsigned) version of awards, upon request of the parties only. This development enables the Secretariat to keep a mirror file in electronic form for each case. VIAC is currently working on further features to promote efficient exchange of pleadings, documents and correspondence between the parties, arbitrators and VIAC.

