

**40** YEARS  
1975-2015

**VIAC** || Vienna International  
Arbitral Centre

**RULES OF  
ARBITRATION  
AND MEDIATION**

**VIENNA RULES AND VIENNA MEDIATION RULES**

## **RULES OF ARBITRATION**

VIENNA RULES | in force as from 1 July 2013



## **RULES OF MEDIATION (ANNEX 5)**

VIENNA MEDIATION RULES | in force as from 1 January 2016

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# INDEX

## VIENNA RULES AND VIENNA MEDIATION RULES

### GENERAL PROVISIONS

Article 1	The VIAC .....	8
Article 2	The Board .....	9
Article 3	The International Advisory Board .....	10
Article 4	The Secretary General and the Secretariat .....	10
Article 5	Languages of Correspondence .....	11
Article 6	Definitions .....	11

### COMMENCING THE ARBITRATION

Article 7	Statement of Claim .....	12
Article 8	Answer to the Statement of Claim .....	13
Article 9	Counterclaim .....	13
Article 10	Registration Fee .....	14
Article 11	Transmission of the File .....	14
Article 12	Time Limits, Service and Written Submissions .....	15
Article 13	Representatives .....	16

### JOINDER OF THIRD PARTIES AND CONSOLIDATION

Article 14	Joinder of Third Parties .....	16
Article 15	Consolidation .....	17

### THE ARBITRAL TRIBUNAL

Article 16	The Arbitrators .....	18
Article 17	Constitution of the Arbitral Tribunal .....	18
Article 18	Constitution of the Arbitral Tribunal in Multi-Party Proceedings .....	19
Article 19	Confirmation of the Nomination .....	20
Article 20	Challenge of Arbitrators .....	20
Article 21	Premature Termination of the Arbitrator's Mandate .....	21
Article 22	Effects of the Premature Termination of the Arbitrator's Mandate .....	22

### CHALLENGE OF EXPERTS

Article 23	Challenge of Experts .....	22
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## JURISDICTION OF THE ARBITRAL TRIBUNAL

Article 24 Jurisdiction of the Arbitral Tribunal .....	23
--	----

## THE PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

Article 25 Place of Arbitration .....	23
Article 26 Language of the Proceedings .....	24
Article 27 Applicable Law, Amiable Compositeur .....	24
Article 28 Conduct of the Arbitration .....	24
Article 29 Establishing the Facts of the Case .....	25
Article 30 Oral Hearing .....	25
Article 31 Duty to Object .....	25
Article 32 Closure of the Proceedings .....	26
Article 33 Interim and Conservatory Measures .....	26
Article 34 Means of Termination of the Proceedings .....	27
Article 35 Decisions of the Arbitral Tribunal .....	27
Article 36 Arbitral Award .....	28
Article 37 Decision as to Costs .....	28
Article 38 Settlement .....	29
Article 39 Correction, Clarification and Supplementation of the Arbitral Award .....	29
Article 40 Remission to the Arbitral Tribunal .....	30
Article 41 Publication of Awards .....	30

## COSTS

Article 42 Advance on Costs .....	30
Article 43 Advance on Costs for Additional Procedural Costs .....	31
Article 44 Composition and Calculation of the Procedural Costs .....	32

## MISCELLANEOUS PROVISIONS

Article 45 Expedited Procedure .....	34
Article 46 Disclaimer .....	35
Article 47 Transitional Provisions .....	35

ANNEX 1 MODEL CLAUSE .....	38
----------------------------	----

ANNEX 2 INTERNAL RULES OF THE BOARD .....	39
---	----

ANNEX 3 SCHEDULE OF FEES .....	40
--------------------------------	----

ANNEX 4 VIAC AS APPOINTING AUTHORITY .....	41
--	----

## ANNEX 5 RULES OF MEDIATION

Article 1 Introductory Provisions .....	42
Article 2 Definitions .....	42
Article 3 Commencing the Proceedings .....	43
Article 4 Registration Fee .....	44
Article 5 Place of the Meetings and Sessions .....	44
Article 6 Language of the Proceedings .....	44
Article 7 Appointment of the Mediator .....	45
Article 8 Advance on Costs and Costs .....	46
Article 9 Conduct of the Proceedings .....	47
Article 10 Parallel Proceedings .....	48
Article 11 Termination of the Proceedings .....	48
Article 12 Confidentiality, Admissibility of Evidence and Subsequent Party Representation .....	49
Article 13 Disclaimer .....	50
Article 14 Transitional Provisions .....	50

# GENERAL PROVISIONS

## THE VIAC

### Article 1

(1) The International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna International Arbitral Centre, hereinafter “the VIAC” or “Arbitral Centre”) administers arbitrations that are to be conducted in accordance with the VIAC Rules of Arbitration (hereinafter “Vienna Rules”) pursuant to an agreement of the parties, if at the time of the conclusion of the agreement at least one of the parties had its place of business or usual residence outside Austria.

For the resolution of disputes of an international character, the jurisdiction of an arbitral tribunal to be constituted under the Vienna Rules may also be agreed upon by parties whose place of business or usual residence is in Austria.

(2) If the parties have agreed upon the jurisdiction of an arbitral tribunal constituted under the Vienna Rules, the version of the Vienna Rules in effect at the time of commencement of the arbitration shall apply.

(3) If parties having their place of business or usual residence in Austria at the time of conclusion of the arbitration agreement have agreed that their disputes should be finally settled by an arbitral tribunal to be constituted under the Vienna Rules, and if the dispute is not international in character, the Permanent Arbitration Court of the Vienna Economic Chamber, or, if another place of arbitration in Austria has been agreed upon, of the Regional Economic Chamber in whose territorial jurisdiction the agreed place of arbitration is situated, shall be competent to administer the arbitration. The latter shall conduct the proceedings in accordance with the Rules of Arbitration of the Permanent Arbitration Courts of the Regional Economic Chambers.

## THE BOARD

### Article 2

(1) The Board of the VIAC shall have at least five members. The Board shall be appointed for a term of five years by the Extended Presiding Committee of the Austrian Federal Economic Chamber upon recommendation of the President of the VIAC. Members may be appointed for successive terms. Upon expiration of a term of office, if no new appointment has been made, the members of the Board shall remain in office until new members are appointed. Upon recommendation of the President of the VIAC, the Extended Presiding Committee of the Austrian Federal Economic Chamber may appoint additional members to the Board for the remainder of the serving Board’s term of office.

(2) The members of the Board shall elect from among their number one President and two Vice Presidents to act for the duration of the Board’s term of office. Where the President is prevented from performing his duties, such duties shall be assumed by one of the Vice Presidents in accordance with the Internal Rules of the Board (Annex 2).

(3) Members of the Board who are or were involved in an arbitration administered by the VIAC in any capacity whatsoever may not be present at, or participate in any way in deliberations or decisions pertaining to those proceedings. This shall not impair the existence of a quorum of the Board.

(4) The members of the Board shall perform their duties to the best of their knowledge and ability and in performing their function are independent and shall not be bound to act upon any instruction. They have the duty to keep confidential all information acquired in the course of their duties.

(5) The Board may establish and amend its own Internal Rules (Annex 2).

## THE INTERNATIONAL ADVISORY BOARD

### Article 3

The International Advisory Board consists of international arbitration experts who may be invited by the Board during its term of office. The International Advisory Board assists the Board in an advisory capacity.

## THE SECRETARY GENERAL AND THE SECRETARIAT

### Article 4

(1) Upon recommendation of the Board of the VIAC, the Secretary General and the Deputy Secretary General shall be appointed by the Extended Presiding Committee of the Austrian Federal Economic Chamber for a five year term. The Secretary General and Deputy Secretary General may be appointed for successive terms. Upon expiration of the term, if no new appointment has been made, the Secretary General and the Deputy Secretary General shall remain in office until there is a new appointment.

(2) The Secretariat manages the administrative matters of the VIAC under the direction of the Secretary General and the Deputy Secretary General except for matters reserved for the Board. If a Deputy Secretary General has been appointed, the Deputy Secretary General may render decisions that fall within the competence of the Secretary General if the Secretary General is unable to perform his duties, or with authorization from the Secretary General.

(3) Members of the Secretariat who are or were involved in an arbitration administered by the VIAC in any capacity whatsoever may not be present at, or participate in any way in deliberations or decisions pertaining to those proceedings.

(4) The Secretary General and his Deputy shall perform their duties to the best of their knowledge and ability and shall not be bound to act upon any instruction. They have the duty to keep confidential all information acquired in this function.

(5) If the Secretary General and the Deputy Secretary General become unable to exercise their duties, the Board shall appoint from their number a member to perform the relevant function. For the duration that the appointee serves the function as Secretary General, the appointee's membership in the Board shall be suspended.

## LANGUAGES OF CORRESPONDENCE

### Article 5

The parties' written correspondence with the Board and Secretariat shall be conducted in German or English.

## DEFINITIONS

### Article 6

(1) In the Vienna Rules

**1.1 party or parties** include one or more claimants, respondents and one or more third parties joined to the arbitration in a Statement of Claim;

**1.2 claimant** includes one or more claimants;

**1.3 respondent** includes one or more respondents;

**1.4 third party** includes one or more third parties, who is neither claimant nor respondent to the pending arbitration and whose joinder to this arbitration has been requested;

**1.5 arbitral tribunal** includes a sole arbitrator or a panel of three arbitrators;

**1.6 arbitrator** includes one or more arbitrators;

**1.7 co-arbitrator** includes any member of a panel of arbitrators except its chairman;

**1.8 award** includes any final, partial or interim award;

**1.9 Secretary General** also includes the Deputy Secretary General to the extent the Deputy Secretary General renders decisions in case the Secretary General is unable to perform his duties, or with authorization from the Secretary General.

(2) To the extent the terms used in these Rules refer to natural persons, the form chosen shall apply to both genders.

# COMMENCING THE ARBITRATION

## STATEMENT OF CLAIM

### Article 7

- (1) The arbitration shall be deemed to commence on the date on which the Statement of Claim is received by the Secretariat. Hereby, the proceedings become pending.
- (2) One copy of the Statement of Claim including exhibits shall be submitted for each party, each arbitrator, and the Secretariat.
- (3) The Statement of Claim shall contain the following information:
  - 3.1 the full names, addresses, and other contact details of the parties;
  - 3.2 a statement of the facts and a specific request for relief;
  - 3.3 if the relief requested is not exclusively for a specific sum of money, the monetary value of each individual claim at the time of submission of the Statement of Claim;
  - 3.4 particulars regarding the number of arbitrators in accordance with Article 17;
  - 3.5 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;
  - 3.6 particulars regarding the arbitration agreement and its content.
- (4) If the Statement of Claim does not comply with paragraph 3 of this Article or if copies or exhibits are missing, the Secretary General may request the claimant to remedy the defect or supplement the Statement of Claim. If the claimant does not remedy or supplement the Statement of Claim within the deadline set by the Secretary General, the Secretary General may declare the proceedings terminated (Article 34 paragraph 4). This shall not prevent the claimant from raising the same claims at a later time in another proceeding.
- (5) The Secretary General shall serve the Statement of Claim on the respondent if no order to remedy pursuant to paragraph 4 of this Article was issued or if the claimant complied with such an order.

- (6) The Board may refuse to administer the proceedings if the arbitration agreement deviates fundamentally from and is incompatible with the Vienna Rules.

## ANSWER TO THE STATEMENT OF CLAIM

### Article 8

- (1) With the service of the Statement of Claim, the Secretary General shall request the respondent to submit to the Secretariat an Answer to the Statement of Claim within a period of 30 days, in the requisite number of copies for each party, each arbitrator, and the Secretariat.
- (2) The Answer to the Statement of Claim shall contain the following information:
  - 2.1 the full name, address, and other contact details of respondent;
  - 2.2 comments on the request for relief and the facts upon which the Statement of Claim is based, as well as respondent's specific request for relief;
  - 2.3 particulars regarding the number of arbitrators in accordance with Article 17;
  - 2.4 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.

## COUNTERCLAIM

### Article 9

- (1) Claims by the respondent against the claimant may be raised as Counterclaims in the same proceedings.
- (2) Counterclaims shall be submitted to the Secretariat and forwarded to the arbitral tribunal after payment of the advance on costs. Article 7 also applies to Counterclaims by analogy.
- (3) The arbitral tribunal may return the Counterclaim to the Secretariat to be dealt with in separate proceedings if
  - 3.1 the parties are not identical; or

3.2 a Counterclaim submitted after the Answer to the Statement of Claim would result in a substantial delay in the main proceedings.

(4) The arbitral tribunal shall give the claimant the opportunity to submit an Answer to an admitted Counterclaim. Article 8 also applies to an Answer to the Counterclaim by analogy.

## REGISTRATION FEE

### Article 10

(1) The claimant shall pay the registration fee net of any charges in the amount stipulated in Annex 3 upon submission of the Statement of Claim (Counterclaim). Similarly, in the case of joinder of a third party (Article 14), the requesting party shall pay a registration fee.

(2) If there are more than two parties to the arbitration, the registration fee shall be increased by 10 percent for each additional party, subject to a maximum increase of 50 percent.

(3) The registration fee is non-refundable. The registration fee shall not be deducted from the paying party's advance on costs.

(4) The Statement of Claim and any Request for Joinder of a third party shall only be served on the other parties after full payment of the registration fee. The Secretary General may extend the time period for payment of the registration fee for a reasonable period of time. If payment is not effected by the deadline, the Secretary General may declare the proceedings terminated (Article 34 paragraph 4). This shall not prevent the claimant from raising the same claims at a later time in another proceeding.

## TRANSMISSION OF THE FILE

### Article 11

The Secretary General shall transmit the file to the arbitral tribunal only after:

(1) the Secretariat has received the Statement of Claim (Counterclaim) in accordance with the requirements of Article 7; and

(2) all members of the arbitral tribunal have been appointed; and

(3) the advance on costs pursuant to Article 42 has been paid in full.

## TIME LIMITS, SERVICE AND WRITTEN SUBMISSIONS

### Article 12

(1) A time limit relating to any written submission is satisfied if the submission is dispatched in the manner stipulated in paragraph 2 of this Article on the last day of the time limit. Time limits may be extended on sufficient grounds.

(2) Service shall be addressed to the last address notified in writing as the address for service of the addressee for whom the written submission is intended. Service shall be deemed as validly executed, if dispatched by registered post or letter with confirmation of receipt, courier service, facsimile, e-mail, or by any other means of telecommunication that ensures confirmation of transmission.

(3) Service shall be deemed to have been made

3.1 on the day the written submission to be served was actually received by the addressee; or

3.2 on the day receipt can be presumed, if dispatched in accordance with paragraph 2 of this Article.

(4) Once a party has appointed a representative, service upon the representative's address, as most recently notified in writing, shall be deemed to constitute effective service upon the represented party.

(5) All written submissions and exhibits shall be submitted in the number of copies necessary so that each arbitrator, each party and the Secretariat receive a copy. After transmission of the file to the arbitral tribunal, all written submissions and exhibits shall be sent directly to each party, each arbitrator and the Secretariat in the manner stipulated in paragraph 2 of this Article or in the manner stipulated by the arbitral tribunal. The Secretariat shall receive copies of all written service and communications from the arbitral tribunal to the parties.

(6) Time limits shall start to run on the day following the day the respective written submission triggering the commencement of the time limit is served. If this day is an official holiday or a



non-business day at the place of service, the time limit shall start to run on the next business day. Official holidays or non-business days falling during a time period shall not interrupt the continuation or extend the time limit. If the last day of the time limit is an official holiday or a non-business day at the place of service, the time limit shall end on the next business day.

(7) If a Statement of Claim against multiple respondents cannot be served on all respondents, upon request of the claimant the arbitration shall proceed only against those respondents that received service of the Statement of Claim. The Statement of Claim against the remaining respondents shall be dealt with in a separate proceeding.

## REPRESENTATIVES

### Article 13

In the proceedings before the arbitral tribunal, the parties may be represented or advised by persons of their choice. The Secretary General or the arbitral tribunal may at any time request evidence that the party representative has the authority to represent the party.

## JOINER OF THIRD PARTIES AND CONSOLIDATION

### JOINER OF THIRD PARTIES

#### Article 14

(1) The joinder of a third party in an arbitration, as well as the manner of such joinder, shall be decided by the arbitral tribunal upon the request of a party or a third party after hearing all parties and the third party to be joined as well as after considering all relevant circumstances.

(2) The Request for Joinder shall contain the following information:

- 2.1 the full name, address, and other contact details of the third party;
- 2.2 the grounds upon which the Request for Joinder is based; and

2.3 the requested manner of joinder of the third party.

(3) If a Request for Joinder of a third party is made with a Statement of Claim,

3.1 it shall be submitted to the Secretariat. The provisions of Article 7 *et seqq* shall apply by analogy. The Secretary General shall transmit the Statement of Claim to the third party to be joined as well as to the other parties for their comments. If the joinder is requested by the third party, the Secretary General shall submit copies of the Request for Joinder to the parties to the pending arbitration for their comments.

3.2 the third party may participate in the constitution of the arbitral tribunal pursuant to Article 18 if no arbitrator has yet been appointed.

3.3 the arbitral tribunal may return the Statement of Claim with a Request for Joinder of a third party to the Secretariat to be treated in separate proceedings. In this case, the Board may revoke any confirmed nomination or appointment of arbitrators and order the new constitution of the arbitral tribunal or arbitral tribunals in accordance with Article 17 *et seqq*.

## CONSOLIDATION

### Article 15

(1) Upon a party's request two or more proceedings may be consolidated if

- 1.1 the parties agree to the consolidation; or
- 1.2 the same arbitrator(s) was/were nominated or appointed;

and the place of arbitration in all of the arbitration agreements on which the claims are based is the same.

(2) The Board shall decide on Requests for Consolidation after hearing the parties and the arbitrators already appointed. The Board shall consider all relevant circumstances in its decision, including the compatibility of the arbitration agreements and the respective stage of the proceedings.

# THE ARBITRAL TRIBUNAL

## THE ARBITRATORS

### Article 16

(1) Each party shall be free to nominate a person as its arbitrator. Any person with full legal capacity may act as arbitrator, provided the parties have not agreed upon any particular additional qualification requirements. The arbitrators have a contractual relationship with the parties and shall render their services to the parties.

(2) The arbitrators shall perform their mandate independently of the parties and impartially, to the best of their knowledge and ability and shall not be bound to act upon any instruction. They have the duty to keep confidential all information acquired in the course of their duties.

(3) If a person intends to accept an appointment as an arbitrator, the person shall sign and submit a declaration to the Secretary General before his appointment confirming his (i) impartiality and independence; (ii) availability; (iii) acceptance of office; and (iv) submission to the Vienna Rules.

(4) An arbitrator shall disclose in writing all circumstances that could give rise to doubts as to his impartiality, independence or availability or that conflict with the agreement of the parties. The duty to immediately disclose such circumstances continues to apply throughout the arbitration.

(5) Board members may be nominated as arbitrators by the parties or co-arbitrators, but shall not be appointed as arbitrators by the Board.

## CONSTITUTION OF THE ARBITRAL TRIBUNAL

### Article 17

(1) The parties may agree whether the proceedings will be conducted before a sole arbitrator or a panel of three arbitrators. The parties may also agree on the manner of appointment of the arbitrators. In the absence of an agreement, paragraphs 2 to 6 of this Article shall apply.

(2) If there is no agreement regarding the number of arbitrators, the Board shall determine whether the dispute will be decided by

a sole arbitrator or by a panel of three arbitrators. In doing so, the Board shall take into consideration the complexity of the case, the amount in dispute, and the parties' interest in an expeditious and cost-efficient decision.

(3) If the dispute is to be resolved by a sole arbitrator, the parties shall jointly nominate a sole arbitrator and indicate the arbitrator's name, address and other contact details within 30 days after receiving the Secretary General's request. If such nomination is not made within this time period, the sole arbitrator shall be appointed by the Board.

(4) If the dispute is to be resolved by a panel of arbitrators, the party that has not yet nominated an arbitrator shall be requested to submit the name, address and other contact details of its nominee within 30 days after receiving the Secretary General's request. The Board shall appoint an arbitrator if the party does not nominate an arbitrator within this time period.

(5) If the dispute is to be resolved by a panel of arbitrators, the co-arbitrators shall jointly nominate a chairman and indicate his name, address and other contact details within 30 days after receiving the Secretary General's request. If such nomination is not made within this time period, the chairman shall be appointed by the Board.

(6) The parties are bound by their nomination of arbitrator as soon as the nominated arbitrator has been confirmed by the Secretary General or the Board (Article 19).

## CONSTITUTION OF THE ARBITRAL TRIBUNAL IN MULTI-PARTY PROCEEDINGS

### Article 18

(1) The constitution of the arbitral tribunal in multi-party proceedings shall be conducted in accordance with Article 17, with the following supplements:

(2) If the dispute is to be resolved by a panel of arbitrators, the side of claimant and the side of respondent shall jointly nominate their arbitrator to the Secretary General.

(3) Participation of a party in the joint nomination of an arbitrator shall not constitute consent to multi-party arbitration.

(4) If pursuant to paragraph 2 of this Article a joint arbitrator is not nominated within the time period, the Board shall appoint the arbitrator for the defaulting party/parties. In exceptional cases, after granting the parties the opportunity to comment, the Board may revoke appointments already made and appoint new co-arbitrators or all arbitrators.

## CONFIRMATION OF THE NOMINATION

### Article 19

(1) After an arbitrator has been nominated, the Secretary General shall obtain the arbitrator's declarations pursuant to Article 16 paragraph 3. The Secretary General shall forward a copy of these statements to the parties. The Secretary General shall confirm the nominated arbitrator, if no doubts exist as to the impartiality and independence of the arbitrator and his ability to carry out his mandate. The Secretary General shall inform the Board of such confirmation at the next meeting of the Board.

(2) If deemed necessary by the Secretary General, the Board shall decide whether to confirm a nominated arbitrator.

(3) Upon confirmation the nominated arbitrator shall be deemed appointed.

(4) 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 chairman within 30 days. Articles 16 to 18 shall apply by analogy. If the Secretary General or the Board refuses to confirm the new nominated arbitrator, the right to nominate shall lapse and the Board shall appoint the arbitrator.

## CHALLENGE OF ARBITRATORS

### Article 20

(1) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not fulfil the qualifications agreed by the parties. A party may challenge the arbitrator it nominated, or in whose nomination it has participated, only for reasons the party became aware of after the nomination or its participation in the nomination.

(2) A party's challenge of an arbitrator shall be submitted to the Secretariat within 15 days from the date the party making the challenge became aware of the ground for the challenge. The challenge shall specify the ground for the challenge and include corroborating materials to substantiate the challenge.

(3) If the challenged arbitrator does not resign, the Board shall rule on the challenge. Before the Board makes a decision, the Secretary General shall request comments from the challenged arbitrator and the other party/parties. The Board may also request comments from other persons. All comments shall be communicated to the parties and the arbitrators.

(4) The arbitral tribunal, including the challenged arbitrator, may continue the arbitration while the challenge is pending. The arbitral tribunal may not issue an award until after the Board has ruled on the challenge.

## PREMATURE TERMINATION OF THE ARBITRATOR'S MANDATE

### Article 21

(1) The mandate of an arbitrator terminates prematurely if

- 1.1 the parties so agree; or
- 1.2 the arbitrator resigns; or
- 1.3 the arbitrator dies; or
- 1.4 the arbitrator was successfully challenged; or
- 1.5 the arbitrator is removed from his office by the Board.

(2) Either party may request that an arbitrator is removed from his office if the arbitrator is prevented from exercising his tasks for more than a temporary period of time or otherwise fails to perform his duties, including also the duty to proceed without any undue delay. The party shall submit the request to the Secretariat. If it is apparent to the Board that any incapacity is not merely temporary, or that the arbitrator is not fulfilling his duties, the Board may remove an arbitrator from his office without a party's request. The Board shall decide on the removal after granting the parties and the respective arbitrator the opportunity to comment.

## EFFECTS OF THE PREMATURE TERMINATION OF THE ARBITRATOR'S MANDATE

### Article 22

(1) If an arbitrator's mandate terminates prematurely (Article 21), the arbitrator shall be replaced. The appointment of a substitute arbitrator shall be made in accordance with the appointment procedure agreed by the parties. If no agreement exists, the Secretary General shall request that

- 1.1 the parties, in the case of a sole arbitrator; or,
- 1.2 the remaining co-arbitrators, in the case of the chairman of a tribunal; or,
- 1.3 the nominating party or the party on whose behalf the arbitrator was appointed, when the arbitrator was nominated by a party or was appointed on behalf of a party;

nominate a substitute arbitrator within 30 days – in the cases addressed by paragraphs 1.1 and 1.2 of this Article jointly – and to indicate the nominee's name, address and other contact details to the Secretary General. Articles 16 to 18 apply by analogy. If there is no nomination within the time limit, the Board shall appoint the substitute arbitrator. If a substitute arbitrator is successfully challenged (Article 21 paragraph 1.4) the right to nominate a substitute arbitrator shall lapse and the Board shall appoint the substitute arbitrator.

(2) If an arbitrator's mandate terminates prematurely pursuant to Article 21, the new arbitral tribunal shall determine, after requesting comments from the parties, whether and to what extent previous stages of the arbitration shall be repeated.

## CHALLENGE OF EXPERTS

### CHALLENGE OF EXPERTS

#### Article 23

Article 20 paragraphs 1 and 2 shall apply by analogy to the challenge of experts appointed by the arbitral tribunal. The arbitral tribunal shall decide the challenge.

## JURISDICTION OF THE ARBITRAL TRIBUNAL

### JURISDICTION OF THE ARBITRAL TRIBUNAL

#### Article 24

(1) A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the first pleading on the merits. A party is not precluded from raising such an objection by the fact that it has nominated an arbitrator pursuant to Article 17 or participated in the nomination of an arbitrator pursuant to Article 18. An objection 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 its authority is raised during the arbitration.

A later objection shall be barred in both cases; provided that, if the arbitral tribunal considers the delay to be sufficiently excused, it may admit a later objection.

(2) The arbitral tribunal shall decide on its own jurisdiction. The decision on jurisdiction may be made together with the decision on the merits or in a separate award. Where the arbitral tribunal declines jurisdiction, it shall upon the request of one of the parties decide on the parties' costs obligations.

## THE PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

### PLACE OF ARBITRATION

#### Article 25

The parties are free to agree on the place of arbitration. Unless the parties agree or have agreed otherwise

- (1) the place of arbitration shall be Vienna;
- (2) the arbitral tribunal may conduct procedural acts at any location it deems appropriate.

The arbitral tribunal shall be free to deliberate at any location and in any manner.

## LANGUAGE OF THE PROCEEDINGS

### Article 26

In the absence of an agreement by the parties, immediately after transmission of the file, the arbitral tribunal shall determine the language or languages of the arbitration, having due regard to all circumstances, including the language of the contract.

## APPLICABLE LAW, AMIABLE COMPOSITEUR

### Article 27

(1) The arbitral tribunal shall decide the dispute in accordance with the statutory provisions or rules of law agreed upon by the parties. Unless the parties have expressly agreed otherwise, any agreement as to the law or the legal system of a given state shall be construed as a direct reference to the substantive law of that state and not to its conflict-of-laws rules.

(2) If the parties have not determined the applicable statutory provisions or rules of law, the arbitral tribunal shall apply the applicable statutory provisions or rules of law which it considers appropriate.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only in cases where the parties have expressly authorised it to do so.

## CONDUCT OF THE ARBITRATION

### Article 28

(1) The arbitral tribunal shall conduct the arbitration in accordance with the Vienna Rules and the agreement of the parties but otherwise in the manner it deems appropriate. The arbitral tribunal shall treat the parties fairly and shall grant the parties the right to be heard at every stage of the proceedings.

(2) Subject to advance notice, the arbitral tribunal may *inter alia* declare that pleadings, the submission of evidence, and requests for the taking of evidence shall be admissible only up to a certain point in time of the proceedings.

## ESTABLISHING THE FACTS OF THE CASE

### Article 29

(1) If the arbitral tribunal considers it necessary, it may on its own initiative collect evidence, question parties or witnesses, request the parties to submit evidence, and call experts. Article 43 shall apply if costs are incurred through the taking of evidence and in particular, through the appointment of experts.

(2) The arbitration shall proceed notwithstanding the failure of any party to participate.

## ORAL HEARING

### Article 30

(1) Unless the parties have agreed otherwise, the arbitral tribunal shall decide whether the proceedings should be conducted orally or in writing. If the parties have not excluded an oral hearing, upon any party's request the arbitral tribunal shall hold such a hearing at an appropriate stage of the proceedings. The parties shall, in any case have the opportunity to acknowledge and comment on the requests and pleadings of the other parties and the result of the evidentiary proceedings.

(2) The date of the oral hearing shall be fixed by the sole arbitrator or the chairman. Hearings shall be private. The sole arbitrator or the chairman shall prepare and sign minutes of the hearing, which shall contain at a minimum a summary of the hearing and its results.

## DUTY TO OBJECT

### Article 31

If a party has knowledge of a violation by the arbitral tribunal of a provision of the Vienna Rules or other provisions applicable to the proceedings, it shall immediately file an objection with the arbitral tribunal. Otherwise the party shall be deemed to have waived its right to object.

## CLOSURE OF THE PROCEEDINGS

### Article 32

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. The arbitral tribunal may reopen the proceedings at any time.

## INTERIM AND CONSERVATORY MEASURES

### Article 33

(1) Unless the parties have agreed otherwise, as soon as the file has been transmitted to the arbitral tribunal (Article 11), the arbitral tribunal may at the request of a party grant interim or conservatory measures against another party as well as amend, suspend or revoke any such measures. The other parties shall be heard before the arbitral tribunal renders any decision on interim or conservatory measures. The arbitral tribunal may require any party to provide appropriate security in connection with such a measure. The parties shall comply with such orders, irrespective of whether they are enforceable before State courts.

(2) Any orders for interim or conservatory measures pursuant to this Article shall be in writing. In an arbitration with more than one arbitrator the signature of the chairman shall suffice. If the chairman is hindered from acting, the signature of another arbitrator shall suffice, provided the arbitrator signing the order records the grounds for why the chairman's signature is missing.

(3) Unless the parties have agreed otherwise, orders for interim or conservatory measures shall state the reasons upon which they are based. The order shall identify the date on which it was issued and the place of arbitration.

(4) Orders for measures shall be preserved for the record in the same manner as awards (Article 36 paragraph 5).

(5) The provisions of paragraphs 1 to 4 of this Article do not prevent the parties from applying to any competent State authority for interim or conservatory measures. A request to a State authority to order such measures or to enforce such measures already ordered by the arbitral tribunal shall not constitute an infringe-

ment or waiver of the arbitration agreement and shall not affect the powers of the arbitral tribunal. The parties shall immediately inform the Secretariat and the arbitral tribunal of any such request as well as of all measures ordered by the State authority.

## MEANS OF TERMINATION OF THE PROCEEDINGS

### Article 34

The proceedings are terminated

(1) by the rendering of an award; or

(2) by the conclusion of a settlement (Article 38); or

(3) by an order of the arbitral tribunal, if

3.1 the claimant withdraws its Statement of Claim, unless the respondent objects and the arbitral tribunal recognizes a legitimate interest of the respondent in obtaining a final resolution of the dispute;

3.2 the parties agree to the termination of the arbitration and communicate this agreement to the arbitral tribunal;

3.3 the continuation of the proceedings has become impossible for the arbitral tribunal, in particular because the parties to the arbitration do not pursue the arbitration further despite a written order from the arbitral tribunal, in which it refers to the possibility of terminating the arbitration; or

(4) by a declaration of the Secretary General for failure to comply with an order to remedy (Article 7 paragraph 4) or a payment order (Article 10 paragraph 4 and Article 42 paragraph 3).

## DECISIONS OF THE ARBITRAL TRIBUNAL

### Article 35

(1) Every award and every other decision of the arbitral tribunal requires a majority ruling of its members. If the arbitrators cannot form a majority, the chairman shall decide.

(2) The chairman may decide questions of procedure if so authorized by the co-arbitrators.

## ARBITRAL AWARD

### Article 36

(1) Awards shall be in writing. Awards shall state the reasons on which they are based unless all parties have agreed in writing or in the oral hearing that the award may exclude the reasons.

(2) The award shall identify the date on which it was issued and the place of arbitration (Article 25).

(3) All original copies of an award shall be signed by all arbitrators. The signature of the majority of the arbitrators shall suffice, if the award notes that one of the arbitrators refused to sign or was prevented from signing by an impediment that could not be overcome within an appropriate period of time. If the award is a majority award and not a unanimous award, this shall be noted upon request of the dissenting arbitrator.

(4) All original copies of the award shall be signed by the Secretary General and bear the VIAC stamp, which shall confirm that it is an award of the VIAC, rendered and signed by one or more arbitrators appointed under the Vienna Rules.

(5) The Secretary General shall serve the award on the parties. Upon service, the award shall become binding on the parties. The Secretariat shall retain one original copy of the award, and shall also retain the documentation of proof of service.

(6) Upon request of a party, the sole arbitrator or chairman (or in case he is prevented from acting, another arbitrator) or, in case of their hindrance, the Secretary General shall confirm that the award is final and binding on all original copies.

(7) By agreeing to the Vienna Rules, the parties undertake to comply with the terms of the award.

## DECISION AS TO COSTS

### Article 37

When the proceedings are terminated, upon request of a party, the arbitral tribunal shall state, in the final award or by separate award, the costs of the arbitration as determined by the Secretary General pursuant to Article 44 paragraph 1.1 and determine the amount of the appropriate costs of the parties pursuant to Article 44 paragraph 1.2, as well as other additional expenses pursuant to

Article 44 paragraph 1.3. The arbitral tribunal shall establish who will bear the costs of the proceedings or the apportionment of these costs.

Unless the parties have agreed otherwise, the arbitral tribunal shall decide on the allocation of costs in the manner it deems appropriate.

## SETTLEMENT

### Article 38

The parties may request that a settlement which they have reached be recorded or that the settlement be rendered in the form of an award on agreed terms.

## CORRECTION, CLARIFICATION AND SUPPLEMENTATION OF THE ARBITRAL AWARD

### Article 39

(1) Within 30 days of receipt of the award, any party may file the following applications with the Secretariat for the arbitral tribunal:

1.1 to correct any computational, typographical, printing or similar errors in the award;

1.2 to clarify specific parts of the award;

1.3 to render an additional award on claims made in the arbitration but not resolved in the award.

(2) The arbitral tribunal shall decide on such an application. The other parties shall be heard before the arbitral tribunal makes its decision. The arbitral tribunal shall set a time limit for comments, which should not exceed 30 days. The Secretary General may determine an advance on costs to cover further administrative fees and additional expenses and fees of the arbitral tribunal and make the treatment of such request contingent on the prior full payment of this advance on costs. The additional arbitrator's fees and additional administrative fees may be determined by the Secretary General in the manner he deems appropriate.

(3) Upon its own initiative the arbitral tribunal may issue corrections pursuant to paragraph 1.1 or supplementations pursuant to paragraph 1.3 of this Article within 30 days of the date of the award.

(4) Article 36 paragraph 1 to paragraph 6 apply to the correction, clarification, and supplementation of the award. Corrections and clarifications shall be issued in the form of an addendum and shall constitute an integral part of the arbitral award.

## REMISSION TO THE ARBITRAL TRIBUNAL

### Article 40

When a State court remits proceedings to the arbitral tribunal, the provisions of the Vienna Rules shall apply by analogy. The Secretary General and the Board may take any measures necessary to enable the arbitral tribunal to comply with the requirements of the remission. The Secretary General may determine an advance on costs to cover additional expenses and fees of the arbitral tribunal and the administrative fees.

## PUBLICATION OF AWARDS

### Article 41

The Board and the Secretary General may publish anonymized summaries or extracts of awards in legal journals or the VIAC's own publications, unless a party has objected to publication within 30 days of service of the award.

## COSTS

### ADVANCE ON COSTS

#### Article 42

(1) The Secretary General shall determine the VIAC's prospective administrative fees, the arbitrators' fees and the expenses. The advance on costs shall be paid in equal shares by the parties prior to the transmission of the file to the arbitral tribunal within 30 days of service of the request for payment. In multi-party proceedings one half of the advance shall be paid jointly by the claimants and one half jointly by the respondents. Any further reference in this Article to a party shall be understood to refer to all parties either on the side of claimant or respondent.

(2) By agreeing to the Vienna Rules, the parties mutually undertake to bear the advance on costs in equal parts pursuant to paragraph 1 of this Article.

(3) If the advance on costs allocated to one party is not received or is not received in full within the time limit specified, the Secretary General shall inform the opposing party and request it to pay the outstanding amount within 30 days of service of the request. The obligation of the non-paying party to bear its portion of the advance on costs pursuant to paragraph 2 of this Article shall not be affected thereby. If this share is not paid within the time limit specified, the Secretary General may declare the proceedings terminated (pursuant to Article 34 paragraph 4). This shall not prevent the parties from raising the same claims at a later time in another proceeding.

(4) If a party fails to fulfil its part of the payment obligations pursuant to paragraphs 1 and 2 of this Article, and if the other party pays the respective share pursuant to paragraph 3 of this Article, upon the paying party's request the arbitral tribunal may order the non-paying party by an award or other appropriate form to reimburse the paying party, to the extent it finds that it has jurisdiction over the dispute. This shall not affect the arbitral tribunal's authority and obligation to determine the final allocation of costs pursuant to Article 37.

(5) If the Secretary General determines an additional advance on costs, the procedure as outlined in paragraphs 1 to 4 of this Article shall apply by analogy. 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.

### ADVANCE ON COSTS FOR ADDITIONAL PROCEDURAL COSTS

#### Article 43

(1) If the arbitral tribunal considers certain procedural steps necessary that would have cost implications, such as the appointment of experts, interpreters, or translators, a verbatim transcript of the proceedings, a site visit, or relocation of the hearing, the arbitral tribunal shall notify the Secretary General and arrange for these potential costs to be covered.

(2) The arbitral tribunal may undertake the procedural steps provided for in paragraph 1 of this Article only once the potential costs are sufficiently covered.

(3) The arbitral tribunal shall decide which, if any, consequences for the proceedings shall arise from a failure to pay a required advance on costs according to this Article.



(4) All orders related to the procedural steps mentioned in paragraph 1 of this Article shall be undertaken by the arbitral tribunal for and on account of the parties.

## COMPOSITION AND CALCULATION OF THE PROCEDURAL COSTS

### Article 44

(1) The following shall comprise the procedural costs:

1.1 the administrative fees of the VIAC, the arbitrators' fees including any applicable value-added tax, and the expenses (such as arbitrators' travel and subsistence costs, costs for service of communications, rent, court reporter fees); as well as

1.2 the party's costs, i.e. the reasonable expenses of the parties for their legal representation; and

1.3 other expenses related to the arbitration, in particular those listed in Article 43 paragraph 1.

(2) The Secretary General shall calculate the administrative and arbitrators' fees on the basis of the schedule of fees (Annex 3) according to the amount in dispute and determine these fees together with the expenses at the end of the proceedings (paragraph 1.1 of this Article).

The arbitral tribunal shall determine and fix the costs and other expenses outlined in paragraphs 1.2 and 1.3 of this Article in the award (Article 37).

(3) In fixing the amount in dispute, the Secretary General may deviate from the parties' determination if the parties have made only a partial claim or if a party's claim has clearly been undervalued or no value has been assigned.

(4) If more than two parties are involved in an arbitration, the amount of administrative fees and arbitrators' fees listed in Annex 3 shall be increased by 10 percent for each additional party, to a maximum of 50 percent.

(5) Administrative and arbitrators' fees for Counterclaims and Requests for Joinder of third parties with a Statement of Claim shall be calculated by the Secretary General and paid separately by the parties.

(6) For claims raised by way of set-off against the principal claims, the administrative and arbitrators' fees shall be calculated and paid separately to the extent the determination of these claims is expected to lead to substantial additional work.

(7) The arbitrators' fees listed in Annex 3 are for sole arbitrators. The total fee for a panel of arbitrators is two-and-a-half times the rate of a sole arbitrator. In particularly complex cases, the Secretary General may increase the arbitrators' fees (sole arbitrator and panel of arbitrators) up to 30 percent.

(8) The fees listed in Annex 3 comprise all partial and interim decisions such as awards on jurisdiction, partial awards, decisions on the challenge of experts, orders for conservatory or interim measures, other decisions including additional procedural steps in setting aside proceedings, and procedural orders.

(9) A reduction in the amount in dispute shall be taken into consideration in the calculation of the administrative and arbitrators' fees only if it was made before transmission of the file to the arbitral tribunal.

(10) If the proceedings are prematurely terminated, the Secretary General may reduce the arbitrators' fees in the manner he deems appropriate in consideration of the stage of the proceedings at the time of termination.

(11) Expenses shall be determined according to the actual expenditure.

(12) The fees listed in Annex 3 do not include value added tax, which may apply to the arbitrator's fees. Upon accepting their mandate those arbitrators whose fees are subject to value added tax shall inform the Secretary General of the prospective amount of value added tax.

## MISCELLANEOUS PROVISIONS

### EXPEDITED PROCEDURE

#### Article 45

- (1) The supplementary rules on expedited proceedings apply if the parties have included them in their arbitration agreement or if the parties subsequently agree on their application. The parties' agreement on the conduct of expedited proceedings shall occur no later than the submission of the Answer to the Statement of Claim.
- (2) Unless the rules on expedited proceedings provide otherwise, the general provisions of the Vienna Rules shall apply with the following deviations:
- (3) The time limit for payment of the advance on costs pursuant to Article 42 shall be reduced to 15 days.
- (4) Counterclaims or set-off-claims are admissible only until the time limit for submission of the Answer to the Statement of Claim expires.
- (5) Expedited proceedings shall be conducted by a sole arbitrator, unless the parties have agreed on a panel of arbitrators.
- (6) If the dispute is to be decided by a sole arbitrator, the parties shall jointly nominate a sole arbitrator within 15 days of receiving such a request from the Secretary General. If the parties fail to nominate the sole arbitrator within this time limit, the Board shall appoint the sole arbitrator.
- (7) Where the dispute is to be decided by a panel of arbitrators, the claimant shall nominate an arbitrator in its Statement of Claim. The respondent shall nominate an arbitrator within 15 days of receipt of a request from the Secretary General. The arbitrators nominated by the parties shall nominate a chairman within 15 days of receipt of a request from the Secretary General. If an arbitrator is not nominated within this time period, the Board shall appoint the arbitrator.
- (8) The arbitral tribunal shall render a final award within six months of transmission of the file, unless the proceedings are prematurely terminated. If he deems it necessary, the Secretary General may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own. Exceeding the time limit

for the award will not render the arbitration agreement invalid or deprive the arbitral tribunal of its jurisdiction.

(9) The arbitration shall be administered in such a manner that the arbitral tribunal can render a final award within six months after the transmission of the file. Unless the arbitral tribunal determines otherwise, the following provisions shall apply:

- 9.1 After the submission of the Statement of Claim and the Answer to the Statement of Claim, the parties will exchange only one further written submission.
- 9.2 The parties shall make all factual arguments in their written submissions and all written evidence shall be attached to the written submissions.
- 9.3 To the extent requested by a party or deemed necessary by the arbitral tribunal, the arbitral tribunal shall hold a single oral hearing, in which all evidence will be taken and all legal issues addressed.
- 9.4 No written submissions shall be filed after the oral hearing.

### DISCLAIMER

#### Article 46

The liability of arbitrators, the Secretary General, the Deputy Secretary General, the Board and its members and the Austrian Federal Economic Chamber and its employees for any act or omission in relation to the arbitration is excluded to the extent legally permissible.

### TRANSITIONAL PROVISIONS

#### Article 47

This version of the Vienna Rules shall apply to all proceedings in which the Statement of Claim was filed after 30 June 2013.



## ANNEX 1 MODEL CLAUSE

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 of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one or three arbitrators appointed in accordance with the said Rules.

Possible supplementary agreements:

- (1) The provisions on expedited proceedings are applicable;
- (2) The number of arbitrators shall be .....  
(one or three);
- (3) The substantive law of ..... shall be applicable;\*
- (4) The language to be used in the arbitral proceedings shall be .....

## ANNEX 2 INTERNAL RULES OF THE BOARD

- (1) The Board's meetings are convened by the President and presided over by him or by one of its Vice Presidents.
- (2) The Board shall have a quorum if more than one third of its members are in attendance. Attendance may also be effected by participation via telephone or video conferencing as well as via internet.
- (3) The Board shall decide by simple majority of the members present who are eligible to vote. If there is a tie vote, the presiding member shall have a casting vote.
- (4) If the two Vice Presidents are prevented from exercising their duties, the President's duties shall be assumed by the most senior member based on length of term of office. Otherwise the Vice President with the longest period of office as Board member shall perform the duties.
- (5) Members of the Board who are or were involved in any capacity whatsoever in an arbitration administered by the VIAC shall not be allowed to be present or to participate in any way in discussions or decisions pertaining to those proceedings. This shall not impair the existence of a quorum of the Board.
- (6) Decisions by resolution by correspondence are permissible. In the latter case, the President shall submit a written proposal to the members and sets a time limit for the casting of written votes. Articles 2 and 3 of this Annex shall apply by analogy. Each member has the right to request a meeting regarding the written proposal.
- (7) The Board is not obligated to state the reasons on which its decisions are based.

\*) In this context, consideration may be given to the possible application or exclusion of the United Nations Convention on Contracts for the International Sale of Goods, 1980.

## ANNEX 3 SCHEDULE OF FEES

**Registration Fee EUR 1,500<sup>1</sup>**

**Administrative Fees<sup>2</sup>**

Amount in dispute in EUR		Rate in EUR
from	to	
0	100,000	1,500
100,001	200,000	3,000 + 1.875 % of amt. over 100,000
200,001	500,000	4,875 + 1.250 % of amt. over 200,000
500,001	1,000,000	8,625 + 0.875 % of amt. over 500,000
1,000,001	2,000,000	13,000 + 0.500 % of amt. over 1,000,000
2,000,001	5,000,000	18,000 + 0.125 % of amt. over 2,000,000
5,000,001	10,000,000	21,750 + 0.063 % of amt. over 5,000,000
	over 10,000,000	24,900 + 0.013 % of amt. over 10,000,000 in total max. 60,000 (24,900 + 35,100)

**Fees for Sole Arbitrators<sup>2,3</sup>**

Amount in dispute in EUR		Rate in EUR
from	to	
0	100,000	6 %, minimum fee 3,000
100,001	200,000	6,000 + 3.00 % of amt. over 100,000
200,001	500,000	9,000 + 2.50 % of amt. over 200,000
500,001	1,000,000	16,500 + 2.00 % of amt. over 500,000
1,000,001	2,000,000	26,500 + 1.00 % of amt. over 1,000,000
2,000,001	5,000,000	36,500 + 0.60 % of amt. over 2,000,000
5,000,001	10,000,000	54,500 + 0.40 % of amt. over 5,000,000
10,000,001	20,000,000	74,500 + 0.20 % of amt. over 10,000,000
20,000,001	100,000,000	94,500 + 0.10 % of amt. over 20,000,000
	over 100,000,000	174,500 + 0.01 % of amt. over 100,000,000

## ANNEX 4 VIAC AS APPOINTING AUTHORITY

If VIAC is requested to act as appointing authority, the applicant shall pay a non-refundable fee in the amount of EUR 2,000 for each request. A request will be processed only after full payment of this fee.

<sup>1</sup> See Article 10 | <sup>2</sup> See Article 44 para 2 and 4 | <sup>3</sup> See Article 44 para 7

# ANNEX 5 RULES OF MEDIATION

## INTRODUCTORY PROVISIONS

### Article 1

- (1) The VIAC Rules of Mediation (hereinafter “Vienna Mediation Rules”) shall apply in the version applicable at the time of the commencement of the Proceedings if the parties, before or after the dispute has arisen, agree to submit their dispute to the Vienna Mediation Rules.
- (2) The Vienna Mediation Rules may be amended by a written agreement of all parties. Following the appointment of the mediator, every amendment is also subject to the mediator’s consent.
- (3) The Board may refuse to administer Proceedings under the Vienna Mediation Rules if any agreed amendments are incompatible with the Vienna Mediation Rules.

## DEFINITIONS

### Article 2

- (1) In the Vienna Mediation Rules
  - 1.1 **Proceedings** refers to a mediation, any other alternative dispute resolution method chosen by the parties, or a combination of dispute resolution methods that are supported by a mediator and conducted under the Vienna Mediation Rules;
  - 1.2 **Mediator** refers to one or more neutral third persons who support the parties in the resolution of their dispute;
  - 1.3 **Party** refers to one or more **parties** who agree or have agreed to submit their dispute to the Vienna Mediation Rules.
- (2) To the extent the terms used in the Vienna Mediation Rules refer to natural persons, the form chosen shall apply to both genders.

## COMMENCING THE PROCEEDINGS

### Article 3

- (1) Any party wishing to commence Proceedings under the Vienna Mediation Rules shall submit a written request to the Secretariat. The Proceedings shall be deemed to commence on the date on which the request is received by the Secretariat in the event of an agreement of the parties to submit their dispute to the Vienna Mediation Rules. Absent such an agreement, the Proceedings shall be deemed to commence on the date on which such agreement was subsequently concluded by the parties.
- (2) A copy of the request including exhibits shall be submitted for each party who did not submit the request, each mediator, and the Secretariat.
- (3) The request shall include the following:
  - 3.1 the full names, addresses and other contact details of the parties;
  - 3.2 a short description of the facts and the dispute;
  - 3.3 the amount in dispute;
  - 3.4 the full name, address and other contact details of the mediator nominated, or attributes that a mediator to be appointed should possess;
  - 3.5 particulars or proposals regarding an agreement of the parties to submit their dispute under the Vienna Mediation Rules, in particular as regards
    - i. the number of mediators;
    - ii. the language(s) to be used in the Proceedings.
- (4) The Secretary General shall confirm receipt of the request and serve the request on the other party and invite comments within a set time limit provided that the request was not submitted jointly by all parties.

## REGISTRATION FEE

### Article 4

- (1) If an agreement between the parties to submit their dispute to the Vienna Mediation Rules already exists, the registration fee shall be paid net of any charges in the amount stipulated in Annex 3 to the Vienna Rules upon submission of the request. If no such agreement exists, the registration fee shall be paid only upon subsequent conclusion of such agreement.
- (2) The registration fee is non-refundable. The registration fee shall not be deducted from the paying party's advance on costs.
- (3) If arbitral proceedings under the Vienna Rules are commenced immediately before, during, or after commencement of Proceedings under the Vienna Mediation Rules between the same parties and concerning the same subject matter, no further registration fee will be charged in the later commenced proceedings.
- (4) The Secretary General may extend the time limit for the payment of the registration fee as appropriate. If payment is not effected within the time limit set, the Secretary General may declare the Proceedings terminated.

## PLACE OF THE MEETINGS AND SESSIONS

### Article 5

Irrespective of any preceding or parallel arbitral proceedings, the mediator shall, in consultation with the parties and after giving due consideration to all the circumstances, determine the place of the mediation meeting(s) or session(s). The mediator may determine a different place for each meeting or session, if he deems that to be appropriate.

## LANGUAGE OF THE PROCEEDINGS

### Article 6

Immediately after transmission of the file (Article 9 para 1), the mediator, after consultation with the parties and giving due consideration to all the circumstances, shall determine the language(s) of the Proceedings.

## APPOINTMENT OF THE MEDIATOR

### Article 7

- (1) Absent an agreement of the parties regarding the identity of the mediator or his mode of appointment, the Secretary General shall invite the parties to jointly nominate a mediator and indicate his name, address and contact details within a set time limit.
- (2) The Secretariat may assist the parties in the joint nomination of the mediator in particular by proposing one or more mediators from which the parties may jointly nominate one or more mediators. If the parties fail to jointly nominate a mediator, the Board shall appoint the mediator. In doing so, the Board shall give due consideration to the parties' preferences as to the mediator's attributes.
- (3) Prior to the appointment of the mediator by the Board or the confirmation of the nominated mediator, the mediator shall sign and submit to the Secretary General a declaration confirming his (i) impartiality and independence, (ii) availability, (iii) acceptance of office, and (iv) submission to the Vienna Mediation Rules. The mediator shall disclose in writing all circumstances that could give rise to doubts as to his impartiality or independence or that conflict with the agreement of the parties. This duty of the mediator continues to apply throughout the Proceedings. The Secretary General shall forward a copy of these statements to the parties for comments.
- (4) If there are no doubts as to the impartiality and independence of the mediator and his ability to duly carry out his mandate, the Board shall appoint the mediator or the Secretary General shall confirm the nominated mediator. If deemed necessary by the Secretary General, the Board shall decide whether to confirm a nominated mediator. Upon confirmation the nominated mediator shall be deemed appointed.
- (5) If the confirmation of a mediator is rejected or if the exchange of a mediator becomes necessary, paras 1 to 4 shall apply *mutatis mutandis*.

## ADVANCE ON COSTS AND COSTS

### Article 8

(1) The Secretary General shall determine the first part of the advance on costs for the prospective administrative fees of VIAC, the down payment on the mediator's fees (plus any value-added tax) and the anticipated expenses (such as travel and subsistence costs of the mediator, delivery charges, rent etc). This first part shall be paid by the parties prior to the transmission of the file to the mediator within a time limit set by the Secretary General.

(2) Upon transmission of the file, the mediator shall provide an estimate of the prospective duration of the Proceedings as well as his expenses. Thereupon, the Secretary General shall determine the second part of the advance on costs as necessary, which shall be paid by the parties prior to the first session with the mediator.

(3) Once it becomes foreseeable that the Proceedings will not be completed within the estimated time period, the mediator shall immediately inform the Secretary General, who shall then set a further advance on costs in the required amount.

(4) Unless the parties have agreed otherwise in writing, the advances on cost shall be borne by the parties in equal shares. If the advance on costs allocated to one party is not received or not received in full within the time limit specified, the Secretary General shall inform the other party. The other party is free to bear the outstanding share of the advance on costs. If this share is not paid within the time limit specified, the Secretary General may suspend the Proceedings or declare the Proceedings terminated.

(5) Upon termination of the Proceedings, the Secretary General shall calculate the administrative and the mediator's fees and fix these fees together with the expenses.

(6) The administrative fees shall be calculated on the basis of the schedule of fees (Annex 3 to the Vienna Rules) according to the amount in dispute. The administrative fees shall be half of the amount set for arbitration proceedings. In fixing the amount in dispute, the Secretary General may deviate from the parties' determination if the latter was clearly undervalued or if no value was assigned.

(7) The expenses shall be determined according to the actual expenditure.

(8) The amount of the mediator's fees shall be calculated according to the actual time spent on the basis of hourly or daily fee rates. The fee rates shall be fixed by the Secretary General at the time of the mediator's appointment or confirmation following consultation with the mediator and the parties. The Secretary General shall consider the proportionality of the fees and take into account the complexity of the dispute. There shall be no separate fee arrangements between the parties and the mediator.

(9) Unless otherwise agreed in writing, the parties shall bear their own costs, including the costs of legal representation.

(10) If arbitral proceedings under the Vienna Rules are commenced immediately before, during, or after commencement of Proceedings under the Vienna Mediation Rules between the same parties and concerning the same subject matter, the administrative fees of the preceding proceedings shall be deducted from the administrative fees in the later commenced proceedings.

(11) If arbitral proceedings under the Vienna Rules are commenced following termination of Proceedings under the Vienna Mediation Rules between the same parties and concerning the same subject matter, the Secretary General shall apply Article 44 para 10 Vienna Rules for the calculation of the arbitrators' fees correspondingly.

## CONDUCT OF THE PROCEEDINGS

### Article 9

(1) The Secretary General shall transmit the file to the mediator if

- a request in accordance with Article 3 has been submitted;
- the mediator has been appointed; and
- the first part of the advance on costs in accordance with Article 8 para 1 has been paid in full.

(2) The mediator shall promptly discuss with the parties the manner in which the Proceedings shall be conducted. He shall assist the parties in finding an acceptable and satisfactory solution for their dispute. In conducting the Proceedings, the mediator shall be in control of the Proceedings but will let himself be guided by the wishes of the parties insofar as they are in agreement and consistent with the purpose of the Proceedings.



(3) The Proceedings may be conducted in person or through virtual means. The parties are free to select their mediation team in conjunction with guidance from the mediator. Each party shall be represented in a meeting or session with the mediator by a duly appointed and authorized person including the authorization to settle.

(4) Throughout the Proceedings, the parties shall act in good faith, fairly and respectfully. Each party takes on the obligation to participate in at least one session with the mediator, unless the Proceedings are terminated prematurely in accordance with Article 11 para 1 subpara 1.5.

(5) Sessions with the mediator are not public. Only the following individuals shall be allowed to attend:

- the mediator;
- the parties; and
- persons whose attendance was announced to the mediator and the other party in a timely manner before the respective session and who have signed a written confidentiality agreement in accordance with Article 12.

(6) If he considers it appropriate, the mediator may meet with a party in the absence of the other party (*caucus*). The mediator shall keep confidential the information given by one party in the absence of the other party, unless the party giving the information expressly waives such confidentiality vis-à-vis the other party and the mediator agrees to pass on such information.

## PARALLEL PROCEEDINGS

### Article 10

A party may commence or continue any judicial, arbitral or other proceedings in respect of the same dispute, irrespective of whether parallel Proceedings are being conducted under the Vienna Mediation Rules.

## TERMINATION OF THE PROCEEDINGS

### Article 11

(1) The Proceedings shall be terminated by way of a written confirmation of the Secretary General to the parties and upon occurrence of the earliest of the following circumstances:

1.1 an agreement of the parties for the settlement of the entire dispute;

1.2 the notification in writing by any party to the mediator or the Secretary General 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.

1.3 the notification in writing by the mediator to the parties that the Proceedings will, in his opinion, not resolve the dispute between them;

1.4 the notification in writing by the mediator to the parties that the Proceedings are terminated;

1.5 the notification in writing by the Secretary General regarding the failure

- i. to appoint a mediator in accordance with Article 7 paras 1 to 4;
- ii. to comply with a payment order in a timely manner.

(2) The Proceedings may also be terminated in part if one of the grounds for termination listed under para 1 applies only to a part of the dispute.

(3) In the cases listed under para 1, subparas 1.2 to 1.4 and para 2, the mediator shall immediately inform the Secretary General of the circumstance of the termination.

## CONFIDENTIALITY, ADMISSIBILITY OF EVIDENCE AND SUBSEQUENT PARTY REPRESENTATION

### Article 12

(1) The individuals listed under Article 9 para 5 shall treat 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.

(2) Any written documents that were obtained during the Proceedings and would otherwise not have been obtained shall not be used in subsequent judicial, arbitral or other proceedings. Any statements, views, proposals and admissions made during the Proceedings as well as one party's willingness to settle the dispute amicably, shall also remain confidential. Regarding all of the above, the mediator shall not be called as a witness.

(3) The obligations under paras 1 and 2 shall not apply if the law governing these proceedings contains a mandatory provision to the contrary or if it is required for the implementation or the enforcement of an agreement terminating these proceedings.

(4) The fact that the Proceedings are taking place, have taken place or will take place shall not be confidential.

(5) The mediator shall not act as attorney or represent the parties in any other capacity or otherwise advise the parties in judicial, arbitral or other proceedings regarding the dispute that constitutes or constituted the subject matter of the Proceedings.



## DISCLAIMER

### Article 13

The liability of the mediator, the Secretary General, the Deputy Secretary General, the Board and its members, and the Austrian Federal Economic Chamber and its employees for any act or omission in relation to Proceedings under the Vienna Mediation Rules is excluded to the extent legally permissible.

## TRANSITIONAL PROVISIONS

### Article 14

(1) The Vienna Mediation Rules, which entered into force on 1 January 2016, shall apply to all Proceedings in which the request was filed after 31 December 2015.

(2) Where the parties have submitted their dispute to the Conciliation Rules prior to the entry into force of the Mediation Rules, the Vienna Mediation Rules shall apply unless one of the parties puts forward a written objection. In such case the Conciliation Rules shall apply.



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