

**GUIDELINE FOR
ARBITRATORS**

VIENNA RULES AND VIENNA MEDIATION RULES 2018

VIAC
VIAC

These Guidelines serves to facilitate the co-operation between arbitrators and the Secretariat of the Vienna International Arbitral Center („VIAC“), the International Arbitration Institution of the Austrian federal Economic Chamber. In the following we will provide you with an overview of the essential aspects of case administration under the VIAC Rules of Arbitration 2018 („Vienna Rules“). References in these Guidelines to “Articles” without further specification relate to the relevant articles of the Vienna Rules.

If you have any further questions, the Secretariat will be happy to assist. You can reach our team by telephone at +43 5 90 900 4397 or by email to office@viac.eu. In addition, our website www.viac.eu contains plenty of information.

INDEX

I. Arbitral Proceedings

1. Case Administration by VIAC	2
2. Constitution of the Arbitral Tribunal and Transmission of the File	2
3. Submission of Written Communications to the Secretariat	2
4. Venue of Hearings	3
5. Conduct of the Proceedings	3
6. Tribunal Secretary („Administrative Secretary“)	3
7. Closure of the Proceedings and Date of the Award	4
8. Arbitral Awards	4

II. Costs

1. Composition of the Procedural Costs	4
2. Advance on Costs	5
3. Advance on Costs in case of modifications of the amount in dispute and set-off claims	5
4. Advance on Costs for additional Procedural Costs	5
5. Calculation of the Procedural Costs	6
6. Arbitrators' Fees	6
7. Reimbursement of Cash Outlays	7
8. Accounting and Value Added Tax in Arbitration Proceedings	7

GUIDELINES FOR ARBITRATORS

I. ARBITRAL PROCEEDINGS

1. CASE ADMINISTRATION BY VIAC

The Secretariat (Art. 4) manages the administrative matters of the VIAC except for matters which are reserved to the VIAC Board (Art. 2). The Secretariat of VIAC is overseen by the Secretary General, Alice Fremuth-Wolf, and the Deputy Secretary General, Elisabeth Vanas-Metzler. You can find profiles of all members of the Secretariat and of the Board on our website (www.viac.eu).

Each arbitration case receives a case number starting with the prefix „ARB“ and is assigned to a member of the Secretariat, whose name is then announced to you, for the management of the case. This case manager will assist you whenever you require the Secretariat's support in administrative matters.

2. CONSTITUTION OF THE ARBITRAL TRIBUNAL AND TRANSMISSION OF THE FILE

An arbitrator is appointed based on the nomination by at least one party and subsequent confirmation by the Secretary General / Board, or based on direct appointment by the Board. The designated arbitrator shall submit a declaration in accordance with Art. 16 para. 3 („Declaration of acceptance“) prior to appointment.

The Secretary General transmits the file to the arbitral tribunal only once the Secretariat has received the Statement of Claim (Counterclaim) in accordance with the requirements of Article 7, all members of the arbitral tribunal have been appointed, and the advance on costs pursuant to Article 42 has been paid in full (Art. 11). Upon the transmission of the file, the arbitral tribunal commences its conduct of the proceedings.

3. SUBMISSION OF WRITTEN COMMUNICATIONS TO THE SECRETARIAT

The sole arbitrator or chairperson of the arbitral tribunal undertakes to send to the Secretariat on an ongoing basis electronic copies of all written communications between the arbitral tribunal and the parties, in particular of all decisions and procedural orders (Art. 12 para. 2; with regard to arbitral awards, see Point I.8 of these Guidelines). The parties will also receive a request from the Secretariat to send the Secretariat electronic copies of all submissions and exhibits. This enables the Secretariat to keep a complete identical file in electronic form for each case. If the data size of such written communications exceeds the maximum volume of emails, please contact the Secretariat in order to find secure technical solutions, e.g. by establishing a case specific online platform.

The internal correspondence between and among arbitrators (exchange of drafts, coordination, deliberation, etc.) shall generally not be submitted to the Secretariat.

4. VENUE OF HEARINGS

The arbitral tribunal may deliberate or take procedural actions at any location it deems appropriate, without thereby resulting in a change of the place of arbitration (Art. 25 para. 2).

Hearings with parties and meetings of arbitrators, to the extent they take place in Vienna, can be held either at the seat of VIAC in the Austrian Federal Economic Chamber or at any other location.

If court rooms or meeting rooms in the Austrian Federal Economic Chamber are required, we kindly request you to discuss this need with the team member handling the case before fixing the date of the meeting. Please inform us of your requirements in due time. We will do our best to provide for the necessary infrastructure. We also require information regarding the number of participants, the expected duration, the requested technical equipment (e.g. video conference tools, recording devices, projectors, dictaphones, printers) and special administrative services (e.g. court reporters, etc.).

5. CONDUCT OF THE PROCEEDINGS

The arbitral tribunal shall conduct the arbitration in accordance with the Vienna Rules and the agreement of the parties in an efficient and cost-effective manner, but otherwise according to its own discretion. The arbitral tribunal shall treat the parties fairly. The parties shall be granted the right to be heard at every stage of the proceedings (Art. 28 para. 1).

The conduct of any or all arbitrators may be taken into consideration by the General Secretary in determining the arbitrators' fees (Article 44 paragraphs 2, 7 and 10).

6. TRIBUNAL SECRETARY („ADMINISTRATIVE SECRETARY“)

If the arbitral tribunal intends to nominate an administrative secretary, it shall inform the parties of this intention, the name and contact information of the proposed person, as well as the cost provision contained in Art. 44 para. 1, and shall submit a curriculum vitae as well as a declaration of impartiality, independence and confidentiality of the proposed administrative secretary. The parties shall be granted the opportunity to comment. The name, contact information and declaration of impartiality, independence and confidentiality of a proposed administrative secretary shall also be submitted immediately to the Secretariat.

The arbitral tribunal is not permitted to transfer any tasks to the administrative secretary that are genuinely reserved to the arbitral tribunal, such as in particular the decision-making power.

The parties shall not be charged with any fees or costs for the activity of the administrative secretary, with the exception of reasonable expenses (Art. 44 para. 1.1) which shall be paid by the parties. (The principles for the reimbursement of expenses as described in Point II.7 apply.) The administrative secretary is thus 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. The parties shall also not be charged with or pay any fees for the administrative secretary outside of the fees and costs decided upon in the proceedings.

7. CLOSURE OF THE PROCEEDINGS AND DATE OF THE AWARD

Once the arbitral tribunal concludes 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 (Art. 32).

At this point in time, the arbitral tribunal 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.

8. ARBITRAL AWARDS

Chairpersons of the arbitral tribunal and sole arbitrators shall submit to the Secretariat an electronic version of the draft award for review. The Secretariat may point out to the arbitral tribunal possible mistakes of form and propose other non-binding amendments. The arbitral tribunal remains solely responsible for the content of the award.

The final version of the award without the signature page shall be submitted electronically to the Secretariat. In addition, the award shall be signed by the arbitrator(s). The signed last page of the award shall be submitted to the Secretariat in hardcopy form in the number of copies necessary for each party and each arbitrator to receive one copy and for the Secretariat to receive two copies. The signatures of several arbitrators are typically obtained by circulation.

To provide for a standardized form of the award, the necessary number of copies of the award is printed by VIAC on VIAC stationery intended for awards, are bound in the VIAC Secretariat, are signed by the Secretary General in accordance with Art. 36 para. 4, and are sealed with the VIAC stamp. Confirmation is thereby established that the award is an award of the VIAC, rendered and signed by one or more arbitrators appointed under the Vienna Rules.

Upon request of a party, the Secretary General may additionally send the final version of the award without the signature page to the parties in electronic form (Art. 36 para. 5).

Art. 39 applies to the correction, clarification and supplementation of the arbitral award. Even without an application by a party, the arbitral tribunal may upon its own initiative issue corrections (Art. 39 para. 1.1) or supplementations (Art. 39 para. 1.3); in such case, a deadline of 30 days after the date of the award shall be observed (Art. 39 para. 3).

II. COSTS

1. COMPOSITION OF THE PROCEDURAL COSTS

The procedural costs (Art. 44 para. 1) comprise the administrative fees of the VIAC, the arbitrators' fees (including any applicable value-added tax) and reasonable expenses (para. 1.1, see also the schedule of fees in Annex 3); the parties' costs (para. 1.2); and other expenses (para. 1.3).

2. ADVANCE ON COSTS

The advance on costs (also „deposit“) for the prospective procedural costs in accordance with Art. 44 para. 1.1 is calculated and requested by the Secretary General on the basis of the amount in dispute contained in the Statement of Claim or Counterclaim prior to the transmission of the file to the arbitrators (Art. 42); the decision of the Secretary General in this respect is binding. If the amount in dispute is stated in a currency other than Euro, the Secretariat converts this amount into Euros as of the date of the submission of the Statement of Claim or Counterclaim.

For the calculation of the advance on costs, the Secretariat considers the administrative fees of the VIAC as well as the arbitrators' fees in accordance with Annex 3 including any applicable value-added tax and estimates the costs for oral hearings as well as other expenses (see Art. 44 para. 1.1).

For this purpose, please state in the form regarding your transfer instructions whether and, if applicable, at which rate your fees are subject to VAT.

The cost calculator on the VIAC website can forecast only some of these costs; the advance on costs actually fixed will thus be higher than the amount calculated by the cost calculator.

3. ADVANCE ON COSTS IN CASE OF MODIFICATIONS OF THE AMOUNT IN DISPUTE AND SET-OFF CLAIMS

In order to be able to request an additional advance on cost from the parties, if any, we kindly ask you to immediately inform the Secretariat of any increases in the amount in dispute (Art. 42 para. 5). In the absence of such information, the increased amount in dispute will not be considered for the determination of arbitrators' fees. 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. Reductions in the amount in dispute are governed by Art. 44 para. 9, according to which such reductions shall be taken into consideration in the calculation of the administrative and arbitrators' fees only if the reduction was made before transmission of the file to the arbitral tribunal.

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 anticipated to lead to substantial additional work (Art. 44 para. 6).

4. ADVANCE ON COSTS FOR ADDITIONAL PROCEDURAL COSTS

If the arbitrator (arbitral tribunal) considers it necessary to take certain procedural steps that would have cost implications -- such as the appointment of experts, court reporters, interpreters or translators, a verbatim transcript of the proceedings, a site visit or relocation of the hearing --, then the arbitral tribunal shall notify the Secretary General and arrange for these prospective costs to be covered (Art. 43).

The arbitrator (arbitral tribunal) may undertake such procedural steps only once the prospective costs are sufficiently covered. VIAC does not assume liability for costs resulting from arbitrators' dispositions without being covered by parties' advance payments.

5. CALCULATION OF THE PROCEDURAL COSTS

At the conclusion of the proceedings, the Secretary General calculates the administrative fees and the arbitrators' fees according to the amount in dispute on the basis of the schedule of fees (Annex 3) and determines these fees together with the expenses (Art. 44 para. 1.1 in connection with Art. 44 para. 2); the decision of the Secretary General is binding. Thus, chairpersons and sole arbitrators are kindly requested to inform the Secretariat of all cash outlays for which they have not yet been reimbursed. The Secretary General submits the determination of procedural costs in accordance with Art. 44 para. 1.1 to the arbitral tribunal; the arbitral tribunal shall state in the arbitral award the costs determined by the Secretary General in accordance with Art. 44 para. 1.1 in connection with Art. 44 para. 2.

The costs and other expenses outlined in Art. 44 paras. 1.2 and 1.3, by contrast, shall be determined and fixed by the arbitral tribunal in the award (Art. 38).

In its decision on costs, the arbitral tribunal shall also 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 according to its own discretion. The conduct of any or all parties as well as their representatives (Article 13), and in particular their contribution to the conduct of efficient and cost-effective proceedings, may be taken into consideration by the arbitral tribunal in its decision on costs pursuant to Art. 38.

If, after deduction of the calculated procedural costs in accordance with Art. 44 para. 1.1 from the paid advance on costs, a credit remains, such remaining deposit will be paid back to the parties after the termination of the proceedings. Usually, the Secretariat pays back such remaining deposit to the parties in proportion to the payments made to VIAC (typically 50:50). The parties can stipulate that the remaining deposit shall be paid back in a different proportion (in percentage or absolute numbers); in such case, the arbitral tribunal is asked to inform the Secretariat accordingly.

6. ARBITRATORS' FEES

The arbitrators' fees are based on the amount in dispute. The arbitrators' fees listed in Annex 3 apply to sole arbitrators. The total fee for a panel of arbitrators is two-and-a-half times the rate of a sole arbitrator (Art. 44 para. 7). It is impermissible to agree on higher fees with the parties. No legal claim for a specific arbitrator's fee will arise from the amount of fees as calculated by the cost calculator. As to accounting see point 8 below.

The Secretary General may increase the arbitrators' fees according to his own discretion by a maximum total of 40 percent vis-à-vis the schedule of fees (Annex 3), in particular for especially complex cases or for especially efficient conduct of proceedings; conversely, the Secretary General may decrease the arbitrators' fees by a maximum total of 40 percent, in particular for inefficient conduct of proceedings (Art. 44 para. 7).

Arbitrators are free to enter into an agreement among themselves on the splitting of arbitrators' fees among them. If the Secretariat is not informed otherwise at the latest together with the notification on unsettled accounts for cash outlays at the conclusion of the proceedings, then the arbitrators' fees will be split in the proportion of 40% for the chairperson and 30% for each co-arbitrator.

Upon request, the Secretary General may, before the end of the arbitration proceedings, make payments on account to the arbitrators, taking into account the status of the proceedings (Art. 44 para. 2).

The arbitrators' fees are, in principle, determined by the Secretary General at the end of the proceedings. Prior to termination of the arbitral proceedings, the Secretary General may make payments on account to the arbitrators in consideration of the stage of the proceedings (Art. 44 para. 2).

7. REIMBURSEMENT OF CASH OUTLAYS

The advance on costs paid by the parties includes an amount reserved for cash outlays in accordance with Art. 44 para. 1.1, which is calculated by the Secretary General based on the experience gained from previous cases.

Reasonable expenses of the arbitrators, such as e.g. travel and living costs, costs for communications services and other case-related costs, will be reimbursed upon receipt of invoices. Under this condition, e.g. cash outlays for courier services, mailings, telephone conferences organized by a provider etc. are refundable, but not, however, e.g. cash outlays for skype calls or emails.

In case of train travel, the price for first-class tickets will be refunded. In case of air travel, (i) outside of Europe the price for a business class ticket at most, (ii) within Europe the price for an economy class (in justified exceptions business class) ticket will be refunded. The per diem rate for non-resident arbitrators is € 150.00 which will be paid upon request only. If overnight stays are necessary, a maximum amount of € 400.00 (per diem and overnight stay) provided that invoices are submitted, or a maximum amount of € 300.00 (per diem and overnight stay) if no invoices are submitted, will be refunded upon request. Fares for necessary taxi (cab) rides will be refunded upon receipt of the bills. If an arbitrator uses his/her own car, the official Austrian mileage allowance (currently € 0.42 per kilometer) shall apply, however not exceeding the recoverable airfare for the same distance and will be paid upon request.

Reasonable expenses for a tribunal secretary shall be refunded by the parties (see above Point 1.6.).

The above rates include all potential taxes and charges.

As a certain administrative infrastructure is a prerequisite for an arbitrator, no refund shall be made for expenses regarding the use of legal database services, for the purchase of legal literature, such as e.g. journals, etc.

To ensure that sufficient funds for the reimbursement of cash outlays are provided for, we kindly request arbitrators to state their expenses immediately if higher cash outlays have accrued, e.g. upon the conclusion of a hearing.

Unless otherwise instructed, cash outlays will be refunded in Euro currency into the account designated by the arbitrator.

If cash outlays are stated in a currency other than Euro, the Secretariat converts this amount into Euros as of the invoice date.

8. ACCOUNTING AND VALUE ADDED TAX IN ARBITRATION PROCEEDINGS

With regard to value added tax on arbitrators' fees, the services of the arbitrators shall be deemed to have been rendered equally to all parties. The arbitrator's fee is therefore always charged 50:50 to the parties (i.e. the Claimant's and the Respondent's side) since the arbitrator's services are rendered equally to the parties (or party's sides), regardless of who has paid the advance on costs. To prevent the non-paying party from reclaiming VAT in form of input VAT deduction, the invoice to the parties in such a case should include a note stating that only one party has paid the advance. A fee advance (see point 6 above) paid by the institution to an arbitrator is also already a taxable "payment" and must therefore be invoiced to the parties.

In Austria (and other member states of the European Union), for the purpose of implementation of Council Directive 2008/8/EC of 12 February 2008 as regards the place of supply of services, the principle applies that services rendered by an arbitrator are deemed to be rendered at the relevant party's place of business and that vis-à-vis EU-entrepreneurs the "reverse charge" mechanism is to be applied. According to the "reverse charge" principle, the entrepreneur for whom the service was provided in accordance with Art 44 of the Directive is liable for VAT if the service was provided by a service provider not established in this Member State (Art 196 of the Directive)

In practice, this means that not only the fees of individual arbitrators belonging to the same panel may be treated differently from a tax point of view, but also that the respective shares paid in advance by the respective parties, will also be subject to different levels of value added tax or may even be exempt from tax. In order to enable the Secretary General to calculate the applicable VAT correctly, the arbitrators are obliged to inform the Secretary General of the expected amount of the tax rate (Art. 44 para. 12). In practice, this is done together with the declaration of acceptance.

Since the question of value added tax (whether and to what extent it is payable) - depending on the domicile of the parties - is to be assessed differently, it should in any case be addressed by the arbitrator at the beginning of the proceedings (preferably in the case management conference) and discussed with the parties, both with regard to the arbitrators' fees and with regard to the parties representatives' fees. In any case, the arbitrator should request the parties' UID at the beginning of the proceedings.

Please see our Privacy Statement at <http://www.viac.eu/en/privacy-statement>.



**Vienna International Arbitral Centre
of the Austrian Federal Economic Chamber (VIAC)**

Wiedner Hauptstrasse 63, A-1045 Vienna

T +43 (0)5 90 900 4398

F +43 (0)5 90 900 216

E office@viac.eu

www.viac.eu
