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VIAC arbitration (Vienna Rules 2021): a step-by-step guide

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A step-by-step guide to running an arbitration under the Vienna Rules 2021 of the Vienna International Arbitration Centre (VIAC), from preliminary steps to post-award.

Scope of this note

This note sets out the usual steps in an arbitration under the Vienna Rules 2021 of the Vienna International Arbitral Centre (VIAC), providing guidance and links to relevant rules.

The Vienna Rules 2021 entered into force on 1 July 2021 and they apply to all proceedings that commenced after 30 June 2021. They consist of the Rules of Arbitration (Part I: Vienna Rules), the Rules of Mediation (Part II: Vienna Mediation Rules) and Part III (Annexes). All references in this note to the Vienna Rules or to the Vienna Mediation Rules are to their 2021 version, unless otherwise stated.

This note does not cover the VIAC Rules of Investment Arbitration and Mediation that entered into force on 1 July 2021, which apply to all investment proceedings that commenced after 30 June 2021. Those rules are largely based on the Vienna Rules, supplemented by special features that are essential to investment proceedings and are intended to apply by agreement to the arbitration of investment disputes arising under a contract, treaty, statute or other instrument and involving a state, a state-controlled entity or an intergovernmental organization.

Introduction to VIAC

VIAC is one of Europe's leading arbitral institutions and the premier international arbitration institution for central and eastern Europe. It has greatly benefited from its traditional position in a neutral country between east and west. Founded in 1975 as a department of the Austrian Federal Economic Chamber, VIAC has in recent years enjoyed a steadily increasing caseload from a diverse range of parties spanning Europe, the Americas and Asia.

VIAC administers national and international cases, as well as proceedings pursuant to other alternative dispute resolution methods. It consists of three main bodies:

- **The Secretariat.** The Secretary General and his or her Deputy direct the Secretariat, which manages VIAC's administrative activities insofar as they are not reserved for the Board (*article 4(2)*). This includes:
  - setting into motion the arbitral proceedings (a prima facie scrutiny of a claim, its delivery to the respondent, the arbitrator's contract and collection of the advance on costs) and determining the costs at the end of the proceedings;
  - confirming the award; and
  - delivering it to the parties.

  The Secretariat will also assist the parties and arbitrators when requested to do so, for example it may reserve hearing facilities or support other procedural aspects.
- **The Board.** The Board of the VIAC currently consists of 15 members, an honorary member and an honorary president, who are prominent members in the field of arbitration from various professions, including lawyers, academics, judges and a member of the Ministry of Justice. The decision-making powers relate mainly to appointment of and challenges to arbitrators. The Board appoints one of its number as President and up to two Vice Presidents (*article 2(2)*).
- **The Advisory Boards.** VIAC has established three Advisory Boards: the International Advisory Board, the Domestic Advisory Board, and the Mediation Advisory Board. They assist the Board in an advisory capacity and consist of domestic and international arbitration experts (*article 3*) contributing to the development and spread of arbitration and mediation in Austria and abroad.

In addition, on 11 July 2019, the Russian Ministry of Justice officially granted VIAC the status of a permanent arbitral institution in the Russian Federation. This allows the institution to administer international arbitration disputes with Russia as a seat of arbitration (see Legal update, Russian Ministry of Justice grants VIAC permission to administer disputes in Russia). In June

2020, the Russian Council also issued clarifications regarding certain controversial issues of Russian arbitration law (see Legal update, Guidelines issued to HKIAC and VIAC on the arbitral administration of corporate disputes in Russia).

VIAC arbitration

A VIAC arbitration is governed by the Vienna Rules and conducted under the supervision of the VIAC Secretariat. The tribunal will consist of arbitrators nominated by the parties, confirmed by the VIAC Secretary General or the Board, or directly appointed by the VIAC Board.

VIAC arbitrations are generally international in scope and flavour and enjoy all the benefits of administered arbitrations. The Secretariat will, where necessary, take steps to ensure that the arbitration keeps moving at a reasonable pace. The administrative fees are moderate compared to other international arbitration institutions. The average duration of proceedings of VIAC is about one year from the time the case is transferred to the tribunal until the rendering of the award. There are also provisions in the Vienna Rules containing specific opt-in fast-track provisions, referred to as expedited proceedings (*article 45*).

The default place of the arbitration will be Vienna, unless the parties agree otherwise (*article 25*). 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.

In 2020, VIAC opened 40 new domestic and international arbitration and mediation cases (see VIAC Statistics 2020).

Advantages of choosing VIAC

There are several advantages for choosing VIAC to administer arbitral proceedings, including:

- Austria is an arbitration-friendly forum.
- VIAC arbitration is cost-effective.
- Vienna is among the top 20 venues for international arbitration worldwide.
- VIAC arbitrations may be tailored to the needs of the parties.
- VIAC has successfully administered more than 1,600 arbitral proceedings since its inception. It offers excellence, availability and individual attention to parties.
- VIAC offers ancillary services, such as hearing facilities and recording of hearings.
- VIAC works closely with the University of Vienna in running the Austrian Arbitration Academy, consisting of the Summer School and, the Winter School. It is also involved in organising the leading arbitration conference in Austria, the Vienna Arbitration Days, and has successfully hosted GAR Live Vienna for the past years.

Arb-Med-Arb

With its Rules of Mediation (Vienna Mediation Rules), VIAC offers parties a "one-stop-shop" solution to resolve parties' disputes. The parties can first try to resolve their disputes through mediation and, if issues remain unresolved, then switch to arbitration. This also means that, vice-versa, parties may start with arbitration proceedings and, if desired, then work with a mediator to attempt to resolve their dispute amicably while the arbitration may be stayed, and then resort back to arbitration for an award on agreed terms.

Arbitration clause or agreement

VIAC arbitration may be commenced pursuant to a clause in a contract that provides for disputes to be referred to VIAC or arbitrated under Vienna Rules. Alternatively, the parties may conclude an arbitration agreement, after a dispute has arisen, to refer their dispute to VIAC arbitration.

Standard clauses are available on the VIAC website (see VIAC: Model clauses).

Appointing and administering authority

VIAC also acts as an appointing and administering authority in ad hoc arbitrations and mediations, as well as for expert determinations. Annexes 4 and 5 of the Vienna Rules contain detailed rules and fees, as well as the prerequisites for any such request.

Vienna Rules

The Vienna Rules 2021 entered into force on 1 July 2021 and they apply to all proceedings that commenced after 30 June 2021.

VIAC's previous rules, the Vienna Rules 2018 entered into force on 1 January 2018, and they applied (or still apply) to all proceedings initiated on or after that date but before 30 June 2021. Before 1 January 2018, the Vienna Rules 2013 applied, which came into force on 1 July 2013.

A Handbook on the Vienna Rules 2018 was published in February 2019, in both German and English, which comprises a detailed analysis of all provisions and background information. An update on the new provisions following the rules revision in 2021 will be available soon in electronic format.

Vienna Rules arbitration: key features

The key features of the Vienna Rules 2021 include:

- Prerogative of party autonomy and flexibility of rules to meet specific needs of the case.
- Parties may nominate arbitrators; chairpersons are nominated by the co-arbitrators (*article 17*).
- Possibility of opt-in expedited proceedings (*article 45*).
- Parties may apply for security for costs (*articles 33(6) and (7)*).
- Provision on third-party funding (*articles 6(1.9) and 13a).*
- Flexible provisions on joinder of third parties and consolidation (*articles 14 and 15*).
- The arbitral tribunal is entitled at any time during the proceedings to assist the parties in their endeavours to reach a settlement (*article 28(3)*).
- Confidentiality of proceedings and award (*articles 16(2) and 41*).
- Time limit for the issuance of the award, that is that the award must be rendered no later than three months after the last hearing on matters to be decided in an award, or the filing of the last authorised submission concerning such matters, whichever is the later (*article 32 (2)*).
- Secretariat will calculate and collect advance on costs (*article 42*).
- Modern electronic case management system.
- File sharing platform "VIAC Portal" for secure exchange of case related documents between parties, tribunal and Secretariat.
- Moderate fees (*Annex 3*).
- Supplementary rules for disputes relating to succession, which take into account the special features of arbitration proceedings foreseen in a disposition of property upon death (*Annex 6*).

Preliminary steps

Before commencing an arbitration, or responding to a request for arbitration, there are several preliminary steps that you should perform.

Claimant

Before commencing arbitration, consider each of the following points as necessary.

Check arbitration clause

The arbitration clause in your contract, or a separate arbitration agreement, should contain the following:

- Details of the parties involved.
- Reference to a defined legal relationship (whether contractual or not).
- The expression of the will of the parties to have their dispute finally resolved by an arbitral tribunal to the exclusion of the jurisdiction of the state courts, with a reference to either VIAC or the Vienna Rules.

It is advisable to use the standard arbitration clause of VIAC (see VIAC: Model Arbitration Clause).

If the model clauses are not used, check for any amendments or alterations that might affect the scope or the validity of the arbitration agreement. The following supplementary provisions to the model clauses are frequently found:

- Number of arbitrators (one or three).
- Language(s) to be used in the arbitral proceedings.
- Place of arbitration (unless otherwise determined by the parties, the place of arbitration is Vienna (*article 25(1)*).
- Substantive law applicable to the contractual relationship, the substantive law applicable to the arbitration agreement, and any additional rules applicable to the arbitration proceedings.
- Applicability of the provisions on expedited proceedings.
- Scope of the arbitrators' duties to keep proceedings confidential and any extension of that duty to parties, representatives and experts.

VIAC does not perform prima facie scrutiny of the institutions' jurisdiction to administer an arbitration. However, if the claimant fails to provide any jurisdictional basis for VIAC's jurisdiction, and the institution's jurisdiction seems "impossible", the Secretary General will refuse to accept the case and inform the claimant. The claimant may still forward the case to the arbitral tribunal but at the risk of being liable for costs.

Another caveat is that the VIAC Board may refuse to administer arbitration proceedings if the arbitration agreement deviates fundamentally from, or is incompatible with, the Vienna Rules (*article 1(3)*). This also includes cases with compliance or sanctions issues (see also Costs). However, once constituted, the tribunal decides on its own jurisdiction (*article 24*). Therefore, the respondent must raise any jurisdictional challenges no later than the first pleading on the merits (*article 24(1)*).

Check limitation

Check whether your claim is time-barred. It is down to the respondent to raise this issue as it will usually not be taken into account automatically by the arbitral tribunal (check applicable law for this).

The arbitral proceedings are commenced on the date on which the statement of claim is received by the VIAC Secretariat, either in hard copy or electronic form (*article 7(1)*). It is at this stage that the proceedings become

pending (see Communications and the VIAC Portal below). Therefore, the date of receipt can be crucial to determine whether the claimant has filed its claim within any applicable provisions on preclusion or time limitation.

Interim measures

In VIAC arbitrations, a tribunal will only grant an interim measure after the transmission of the file and at the request of a party. Before that time, application for interim measures should be made to the competent state court (there is no provision for an emergency arbitrator in the Vienna Rules (see Multi-party disputes below)). The tribunal will order interim measures in writing, state the date on which the measure was issued and the place of arbitration, as well as the reasons on which the measure is based. The tribunal also has the discretion to require a party to provide appropriate security for any interim measure requested (*article 33*). Before deciding on any interim measure, the other parties must be granted the right to be heard (that is, no ex parte interim measures are permitted under the Vienna Rules (*article 33(1)*).

Prepare your case

It is never too early to start preparing your case. Preparing the factual aspects of the case will usually include:

- Locating and preserving any relevant documents.
- Identifying the documents on which you wish to rely in support of your claim.
- Identifying any documents that may be privileged.
- Taking statements from relevant witnesses.
- Identifying and retaining an expert if necessary.
- Identifying the law that governs the dispute and obtaining advice from foreign lawyers if necessary.

Identify your preferred arbitrator as early as possible and check whether he or she has any conflict of interest. Consider if there are any known circumstances that are likely to give rise to justifiable doubts as to their impartiality or independence. Ensure that you can cover the advance on costs (see Costs below).

Respondent

Check the clause

The most important preliminary task for the respondent is to check the validity of the arbitration agreement and decide whether the disputes that have arisen fall within its scope.

Do you have a counterclaim or set-off claim?

Identify any potential counterclaim or set-off claim against the claimant and assess whether it falls within the scope of the arbitration clause. Under the Vienna Rules, the provisions regarding the statement of claim and the registration fee, as well as the advance on costs, also apply to the assertion of counterclaims (*article 9(2), in conjunction with articles 7, 10 and 11*).

Limitation

It is advisable to take a view on whether the claim against you, or any counterclaim that you wish to assert, are time-barred.

Interim measures

You may need to apply for interim measures. After the file has been transmitted, you may apply to the tribunal, otherwise applications should be made to the state court (see Interim measures above).

In particular, you may wish to consider applying for security for costs (*article 33(6) and (7)*).

Prepare your case

Take steps to prepare your evidence and legal framework for the case as soon as possible (see Prepare your case above). Also, start to identify your preferred arbitrator and ensure that you are ready to cover the advance on costs (see Advance on costs below).

If you wish to settle the dispute, start to prepare for this.

Communications and time limits

The Secretariat manages VIAC's administrative matters, except for matters that are reserved for the VIAC Board (*article 2*).

Communications and the VIAC Portal

Under the Vienna Rules, the claimant must submit a statement of claim in electronic form and in hardcopy form (*article 12(1)*). Apart from this, all other communications are to be sent to the Secretariat in electronic form only.

Since the introduction of the VIAC Portal in March 2021, an online case management platform hosted on HighQ, communication among the VIAC, the parties, and the arbitrators or other third-party neutrals is done via this platform. This increases efficiency, enables transparency among case participants, and addresses the participants' ever-increasing needs for data security, confidentiality and privacy. On the portal, a separate case site will be opened for each case (see VIAC Portal Guidelines).

After transmission of the file to the arbitral tribunal, all communications must take place directly between the arbitral tribunal and the parties in the manner stipulated by the arbitral tribunal. The sole arbitrator or chairperson

of the tribunal will provide the Secretariat with electronic copies of all written communications between the tribunal and the parties, as well as all decisions and procedural orders (*article 12(2)*). Parties should send all submissions and exhibits in electronic form to the Secretariat. This enables the Secretariat to keep a complete identical file in electronic form for each case.

Time limits

Commencement of time limits

The time limits in a VIAC arbitration start to run on the day following the day of service of the respective written submission triggering the commencement of the time limit. If this day is an official holiday or a non-business day at the place of service, the time limit will start to run on the next business day. Official holidays or non-business days falling during a time period will 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 will end on the next business day (*article 12(7)*).

Written communications should be sent in hardcopy form by registered mail, letter with confirmation of receipt, courier service, or in electronic form, or by any other means of communication that provides a record of sending. Written communications shall be sent to the address of the addressee for whom it is intended, as last notified. Once a party has appointed a representative, the written communication shall be sent to the representative's address, as last notified (*article 12(3) and (4)*). Written communications shall be deemed to have been received on the day the addressee has actually received the written communication; or receipt can be presumed, if the written communication was sent in accordance with the provision mentioned before (*article 12(5)*). A time limit relating to any written submission is satisfied if the submission is dispatched in this manner on the last day of the time limit. Time limits may be extended when deemed justified (*article 12(8)*).

Answer to the statement of claim

When the statement of claim has been received by the Secretariat and transmitted to the respondent, the respondent must file an answer to the statement of claim in electronic form to the Secretariat within a period of 30 days (*article 8(1)*). Extensions may be granted if reasoned. The answer should contain all the information listed in article 8(2).

Nomination of arbitrator

Parties may agree on whether the arbitral proceedings will be conducted by a sole arbitrator or a panel of three arbitrators (*article 17(1)*).

The time limit for parties to jointly nominate a sole arbitrator is 30 days after receiving the Secretary General's request (*article 17(3)*). If the dispute is to be resolved by a panel of arbitrators, each party must nominate an arbitrator either in the statement of claim (claimant) or in the answer to the statement of claim (respondent). If one party fails to do so, VIAC's Secretary General will request that party to nominate its arbitrator within 30 days (*article 17(4)*). These two arbitrators must agree on a chairperson within 30 days (*article 17(5)*).

Although these time limits might be extended in accordance with article 12(8), where sufficient grounds exist for such an extension (for example, where the parties are trying to find a suitable person), these extensions are not granted easily. This is for reasons of time and cost-efficiency, as well as for best practice.

Advance on costs

The advance on costs must 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 by the Secretary General (*article 42(3)*) (see also Post-Award below). In principle, the arbitral tribunal shall only address the claims or counterclaims, for which the advance on costs has been paid in full. If a payment is not made within the deadline set by the Secretary General, the arbitral tribunal may suspend the arbitral proceedings in whole or in part, or the Secretary General may terminate the arbitral proceedings (*article 34(3*)) with respect to the relevant claims. This shall not prevent the parties from raising the same claims at a later time in another proceeding (*article 42(11)*).

Correction, clarification and supplementation of the arbitral award

Any party may file an application for correction, clarification and supplementation of the arbitral award within 30 days of receipt of the award (*article 39*) (for further information, see Costs).

Consequences of non-compliance with time limits

Although article 12 does not contain any consequences of non-compliance with time limits, submissions or requests might not be considered by the arbitral tribunal if the parties fail to file them within the set deadline.

Expedited proceedings

The duration of time limits is reduced if you opt for expedited proceedings pursuant to article 45 (for further information, see Costs).

Commencing the arbitration

The arbitration is commenced by the claimant filing a statement of claim with the Secretariat (*article 7*). The respondent then has 30 days to submit an answer to the statement of claim (*article 8*). Both the statement of claim and the answer set out the respective facts and the relief sought. Claims by the respondent may also be raised as a counterclaim in the same proceedings (*article 9*). The tribunal may also determine in a procedural calendar whether further submissions may be filed and on which dates.

Claimant: serving the statement of claim

The claimant should file its statement of claim in accordance with article 7.

The statement of claim should contain:

- Full names, addresses, including electronic mail addresses, and other contact details of the parties and any comment on the parties' nationalities.
- Statement of facts and a specific request for relief.
- The monetary value of each individual claim at the time of submission of the statement of claim, if the relief requested is not exclusively for a specific sum of money.
- The number of arbitrators in accordance with article 17.
- 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.
- Particulars regarding the arbitration agreement and its content.

(*Article 7(2)*.)

In general, the statement of claim may be kept brief with regard to information on the merits of the case, although parties may provide full details of the case at this stage if they wish to. However, it is essential that all necessary information on the arbitration agreement is provided. In particular, the place of arbitration, the language of the proceedings and information relevant for the constitution of the arbitral tribunal should be included. It is also advisable, where possible, to include a reference to the law applicable to the merits of the case, especially where the Board has to appoint or substitute an arbitrator. Furthermore, the claimant may wish to state that any (mandatory) pre-arbitral steps have been exhausted before it has filed the statement of claim, as well as details of an agreement to use the expedited procedure in article 45.

Lastly, the statement of claim should include the contact details of any legal counsel that has been instructed and a corresponding power of attorney (*article 13*).

The claimant must file the statement of claim to the Secretariat in hardcopy form or in electronic form in order to commence the arbitration formally under article 7(1). If filed only electronically, the Secretariat will request the submission of a hard copy and any exhibits in sufficient numbers to allow each party to receive a copy (*article 12(1)*). After having received sufficient hard copies and the registration fee (*article 10*), the Secretary General will serve one copy on the respondent (*articles 7(4) and 10(4)*).

Note that the formal commencement date may be relevant to interrupt any procedural or substantive time limits.

In view of the general trend in e-communication, VIAC encourages parties to submit all written submissions, and any supporting documentation, including witness statements and expert reports, by electronic means throughout the proceedings where possible (according to *article 12(2)*). Further, arbitrators are encouraged to use electronic copies of case-related documents, or to use the VIAC Portal.

Respondent: serving the answer to the statement of claim

Having been served with the statement of claim, the respondent has 30 days to file its answer to the statement of claim, which should include:

- The full name, addresses, including electronic mail addresses, and other contact details of the respondent and any comment on the parties' nationalities.
- Comments on the relief requested and the facts on which the statement of claim is based, as well as the respondent's specific request for relief.
- The number of arbitrators in accordance with article 17.
- 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.

(*Article 8(2)*.)

Similar to the statement of claim, any comments on the merits of the case may be kept brief. What is more important is the respondent's comments on any particulars regarding the arbitration agreement, including on the number or qualification of arbitrators so that the constitution of the tribunal may proceed properly and efficiently.

Note that any plea that the tribunal does not have jurisdiction must be raised no later than the first pleading on the merits (*article 24(1)*). Therefore, in most cases a respondent will raise the objection to the tribunal's jurisdiction in its answer to the statement of claim. A party is not precluded objecting to the

tribunal's jurisdiction if it has nominated an arbitrator or participated in the nomination of an arbitrator (*article 24(1)*).

The answer to the statement of claim should also include the contact details of any external legal counsel and a corresponding power of attorney (*article 13*).

Although the answer to the statement of claim should be filed within 30 days, the respondent may request the Secretariat to extend that time limit.

Even if the respondent does not file an answer to the statement of claim, the arbitration may still proceed, with the file being transmitted to the tribunal once constituted and if the advance on costs has been paid in full (*article 11*).

The respondent may also raise counterclaims in the same proceedings. The Secretariat will send any counterclaims to the tribunal after the payment of the advance on costs. The claimant will be given the opportunity to submit an answer to the counterclaim (*article 9*).

When is the arbitration "commenced"?

The formal commencement of the arbitration takes place on the date when the Secretariat receives the statement of claim in electronic or hardcopy form (*article 7(1)*). If the statement of claim does not comply with the Vienna Rules for any reason (including, but not limited to, the fact that copies or the electronic version is missing), but the claimant remedies that defect within the time limit given by the Secretary General, then the statement of claim is considered to be submitted on the date on which it was first received (*article 7(3)*).

What happens next? Formation of the tribunal

The parties are free to agree whether the matter should be decided by a sole arbitrator or by a panel of three arbitrators (*article 17(1)*). If the parties have not agreed on the number of arbitrators, the Secretariat will grant them a time limit to jointly agree on a number. Failing such agreement within that time limit, the Board will determine the number of arbitrators. In making its decision, the Board will take several aspects into consideration, including the amount in dispute, the number of parties and the complexity of the case (*article 17(2)*).

If the parties have agreed on a sole arbitrator, the parties should jointly nominate an arbitrator within 30 days of the Secretary General's request to do so. If the parties fail to do this, the arbitrator will be appointed by the Board (*article 17(3)*).

If the parties have agreed on a three-member tribunal, the claimant should nominate an arbitrator in the statement of claim and the respondent should nominate one in the answer to the statement of claim. If a party fails to nominate an arbitrator, the Secretary General will request that one be nominated within 30 days. If that nomination is not made within time, that arbitrator will be appointed by the Board (*article 17(4)*). The co-arbitrators should then jointly nominate a chairperson within 30 days of the Secretary General's request failing which the Board will appoint a chairperson (*article 17(5)*).

Once nominated, all arbitrators will receive from the Secretariat a declaration to confirm their:

- Impartiality and independence.
- Availability.
- Qualifications.
- Acceptance of office.
- Submission to the Vienna Rules.

(*article 16(3)*.)

A party shall disclose the existence of any third-party funding and the identity of the third-party funder in its statement of claim or its answer to the statement of claim, or immediately upon concluding a third-party funding arrangement. If a party discloses third-party funding prior to the constitution of the arbitral tribunal, the Secretary General shall inform any arbitrator nominated for appointment or already appointed of such disclosure for purposes of completing the arbitrator declaration (*article 13a*).

Also, the prospective arbitrator must commit to a duty of confidentiality throughout the proceedings (*article 16(2)*).

The declaration must be signed and returned to the Secretariat, which will then be sent to the parties. The parties are granted a time limit to provide their comment on the declaration, in particular if the prospective arbitrator has disclosed certain relevant circumstances.

The arbitrators' duty to disclose any circumstances that could give rise to their impartiality, independence or availability continues to apply throughout the proceedings. Although the IBA Guidelines on Conflicts of Interest in International Arbitration (2014) are only applicable if so agreed, they provide helpful guidance on the kind of circumstances that should be disclosed.

A nominated arbitrator will only be appointed after they have provided the signed declaration and after confirmation by the Secretary General (or, as the case

may be, by the Board). This applies to both party-nominated co-arbitrators and chairpersons.

Once appointed, the arbitrator will receive the VIAC Guidelines for Arbitrators, which includes further information as to how the office should be carried out. For instance, there are provisions on the procedure for appointing a tribunal secretary and in what way reasonable expenses for that secretary can be reimbursed (see also *article 44(1)(1.1)*) (see Expedited proceedings below).

Suitability of arbitrator candidates

Any person with full legal capacity may serve as an arbitrator in VIAC arbitrations (*article 16(1)*). This is subject to any additional requirements as to qualifications of an arbitrator that the parties may have agreed on or to any mandatory provisions at the place of arbitration. In particular, it is not necessary to have a lawyer (whether practising or academic) to act as arbitrator.

If the party or its counsel are not familiar with any suitable arbitration practitioners in the particular jurisdiction they are looking for, there are various options to consider. For instance, VIAC maintains a list of persons who have a certain track record as arbitrator and might serve as arbitrator. The list, which is not mandatory, is ordered by surname, jurisdictions or language. For each person on that list, there is comprehensive information including on the person's education, qualifications, experience as counsel and arbitrator and fields of specialisation (see VIAC: List of Practitioners in International Arbitration). There are also other publicly available databases that the parties may consult (see Checklist, Resources to help you find an arbitrator).

Challenge to appointment

An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if they do not fulfil the qualifications agreed by the parties. Where a party is challenging an arbitrator whom it nominated, or in whose nomination it participated, it can only challenge for reasons of which it became aware after the nomination or its participation in the nomination (*article 20(1)*).

The challenge must specify the grounds on which it is being made and must be submitted to the Secretariat within 15 days from the date the party making the challenge became aware of the grounds for the challenge (*article 20(2)*).

The Board will rule on the challenge and the arbitration may continue while the challenge is pending (*articles 20(3) and (4)*).

Expedited proceedings

The expedited proceedings available in article 45 of the Vienna Rules intend to reduce the duration of the proceedings while not effecting the parties' right to be heard or the quality of the arbitral award.

Opt-in mechanism

To pursue an expedited procedure under the Vienna Rules, the parties must opt in. The provisions will then apply, irrespective of the amount in dispute. Parties may agree to have expedited proceedings in their arbitration agreement or after a dispute has arisen, but the agreement must occur no later than the submission of the answer to the statement of claim (*article 45(1)*). VIAC's model arbitration clause provides for the possibility of expedited proceedings. If the parties have chosen to opt for the expedited procedure, the general provisions of the Vienna Rules apply, unless provided otherwise by article 45.

There is no monetary limit below which the conduct of expedited proceedings is automatic. The parties may also jointly depart from the application of article 45 during the conduct of arbitration proceedings and opt for "normal" arbitration proceedings under the Vienna Rules.

Sole arbitrator

The expedited proceedings will be conducted by a sole arbitrator, unless the parties agree otherwise (*article 45(5)*).

Since the expedited proceedings may present greater time pressures, the Secretary General may raise the arbitrators' fees by up to 30% (in accordance with *article 44(7)*).

Joinder, consolidation and extensions of time limits

The joinder of third parties (*article 14*), consolidation of proceedings (*article 15*) and on possible extensions of time limits (*article 12*) should only be granted sparingly, considering the general purpose of expediting proceedings and the six-month period for rendering a final award.

Time limits

The time limit for the payment of the advance on costs is reduced from 30 to 15 days in expedited proceedings (*article 45(3)*). However, the amount of the advance on costs is still governed by the general provisions of article 42.

Counterclaims and set-off claims may only be made within the time limit for the submission of the answer to the statement of claim (*article 45(4)*).

The tribunal must render a final award within six months from the transmission of the file. The Secretary General may extend this time limit on a justified request by the arbitral tribunal (*article 45(8)*).

Conduct of the proceedings

There are no mandatory requirements concerning the conduct of expedited proceedings. The procedural timetable should be adjusted to the specific circumstances of the case at the discretion of the arbitral tribunal (*article 28*). Nevertheless, it is advisable to prepare a procedural timetable immediately after the transmission of the file to the tribunal.

Unless the tribunal determines otherwise, the following provisions will apply:

- 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.
- The parties should make all factual arguments in their written submissions and all written evidence should be attached.
- To the extent necessary, there will be a single oral hearing and no written submissions can be filed afterwards.

(*Article 45(9)*.)

Emergency arbitrator

There are no provisions for the nomination of an emergency arbitrator in the Vienna Rules. Since the enforceability of an emergency arbitrator's decision is (still) unclear in most jurisdictions, it was decided to refrain from such an option. In urgent cases, the parties should therefore resort to the state courts until an arbitral tribunal has been constituted.

Early dismissal of claims and defences

The Vienna Rules do not provide for the early or summary dismissal of claims and defences. It is conceivable that a tribunal could use its existing procedural powers under article 28 to make an early determination that a claim is manifestly without merit. However, arbitrators may be reluctant to do so unless expressly authorised by the parties, due to fears of the decision being challenged on the "right to be heard" (commonly known as "due process paranoia").

Legal representatives and conduct

Each party has a right to select its own legal representative (*article 13*). The Secretary General and the tribunal may, at any time, request evidence that the party representative has legal authority to represent that party. Under the Vienna Rules, a legal representative does not have to be a qualified lawyer. It depends on the applicable law (for example, the procedural law or statutory law on the legal profession at the place of arbitration or at the place of the oral hearing). The advantage of retaining professional legal counsel is obvious: lawyers who are admitted to a specific bar are subject to those bar rules, in particular with regard to disciplinary matters. Furthermore, under most statutory provisions on bar admission, practising lawyers are under a duty to have a valid insurance on professional liability. Under the rules of the common market of the EU, there are specific provisions on the status of an attorney practising in another EU member state.

Although only applicable with the parties' agreement, the IBA Guidelines on Party Representation in International Arbitration may be helpful to arbitration practitioners on specific issues.

The Vienna Rules provide the tribunal with wide discretionary powers to conduct the proceedings. Such powers include, in principle, the power to make certain orders with regard to a party or its counsel's conduct in the arbitration.

Multi-party disputes

Articles 14, 15 and 18 provide the core provisions establishing the procedural framework for arbitration proceedings involving multiple parties. Article 14 governs the joinder of third parties in an arbitration that has already been instituted between other parties according to the Vienna Rules. The consolidation of two or more (pending) cases is governed by article 15. The constitution of the arbitral tribunal in multi-party proceedings is explained in article 18 (see also Advance on costs below). If admissibility of multi-party proceedings is disputed, the arbitral tribunal will decide such a request after hearing all parties and after having considered all relevant circumstances (*article 18(3)*).

Joinder

Any party, or a third party itself, may request joinder of a third party to pending arbitration proceedings under the Vienna Rules (*article 14(1)*). The request for joinder must contain:

- The full names and contact details of the third party or parties.
- The grounds on which the request for joinder is based.
- The requested manner of joinder.

(*Article 14(2)*.)

The request will be served only after the registration fee has been paid in full. The requesting party must also show and explain its interest in the joinder as a prerequisite for admissibility.

If the request for joinder of a third party is made with a statement of claim, the provisions applicable to the statement of claim according to article 7 must be fulfilled. Depending on who requested the joinder, such requests will be transmitted to all parties of the pending arbitration or to the other party and the third party to be joined for their comments (*article 14(3.1)*).

If the tribunal considers the request for joinder in a statement of claim as inadmissible and returns it to the Secretariat, the Secretary General will subsequently treat such requests in separate proceedings (*article 14(3.3)*). There are no time limits for joinder of third parties, unless the parties agree otherwise.

Under the Vienna Rules, the manner of joinder is intentionally left open and will be determined by the tribunal. The tribunal has a wide discretion when deciding on the joinder of third parties in a pending arbitration, after hearing all parties and potential third parties and considering all relevant circumstances. The third party can be approved as a party with full party status, but they can also receive another status, for instance, as an intervening party to support one of the parties to arbitration ("Streitverkündung" or "Nebenintervenient"), as an assistant for submission of evidence or as amicus curiae.

The third party may also participate in the constitution of the tribunal pursuant to article 18, provided that no arbitrator has yet been appointed when the request for joinder is filed (*article 14(3.2)*). The tribunal once constituted will then decide on the admissibility of the joinder.

Consolidation

Parties may opt for consolidation of two or more arbitration proceedings that were initiated independently of each other, as long as all parties agree or the same arbitrators were appointed in all proceedings. In addition, the place for arbitration must be the same for all proceedings (*article 15(1)*). Requests for consolidation will be decided by the Board, unlike joinder of a third party, which is decided by the arbitral tribunal itself. Before rendering its decision, the Board must grant the parties and the arbitrators already appointed the right to be heard and consider all relevant circumstances of the case (*article 15(2)*).

Consolidation aims to prevent contradictory decisions on similar legal or factual issues and to improve procedural economy.

Constitution of tribunal in multi-party proceedings

The constitution of the tribunal in multi-party proceedings follows the general rules in article 17, with the additional provisions in article 18. If the dispute is to be resolved by a panel of arbitrators, each side shall jointly nominate their arbitrator to the Secretary General (*article 18(2)*). The two selected arbitrators will then nominate the chairman. If the parties fail to nominate a joint arbitrator within the set time period, the Board will decide on the appointment for the defaulting party (or parties). However, in exceptional circumstances, the Board may revoke appointments already made and may appoint new co-arbitrators or all arbitrators, after granting the parties the opportunity to comment (*article 18(4)*).

Note that participation in the nomination of an arbitrator does not (necessarily) constitute consent to multi-party arbitration. If admissibility is disputed, the tribunal will decide in its own discretion on the admissibility of multi-party arbitration after hearing all the parties and considering the relevant circumstances of the case (*article 18(3)*).

Procedure: conducting the reference

The tribunal has the power to conduct the proceedings according to its own discretion and in an efficient and cost-effective manner. However, it must also:

- Conduct the arbitration in accordance with the parties' agreement and the Vienna Rules.
- Treat the parties fairly.
- Grant the parties the right to be heard at every stage of the proceedings.

(*Article 28(1)*.)

In order to grant the parties a right to be heard and to present their cases, a tribunal will usually hear the parties early on regarding specific procedural issues before taking a decision on the conduct of the proceedings (unless the parties agree explicitly otherwise). In order to achieve this, most tribunals in VIAC arbitrations will, after the transmission of the file (*article 11*), contact the parties and set up a conference call or preliminary meeting to discuss procedural issues and the procedural timetable. At the same time, it will often provide the parties with a draft "Procedural Order No 1" where such procedural issues are included. The Vienna Rules do not provide for a specific time limit within which such preliminary steps have to be taken. However, in view of the tribunal's duty to conduct the proceedings in an "efficient and cost-effective" manner,

as well as the Secretary General's powers to decrease fees for inefficient conduct (*article 44(8)*), the tribunal has not only a duty but also a financial incentive to conduct the proceedings efficiently.

Common matters that are raised in the conference call or preliminary meeting include:

- Any jurisdictional issues.
- The place and language of the hearings.
- The timetable for the proceedings.
- Whether any further written submissions may be filed.
- Whether and how any further documentary evidence should be produced.
- Whether any witness evidence or expert evidence is to be adduced.

The parties and the tribunal may reach an agreement as to how the procedural timetable is determined. For example, whether witness statements should be submitted together with the respective written submissions or at another point in time. However, the tribunal may limit the admissibility of requests, submissions or evidence up to a certain point in time (the so-called "cut-off date") (*article 28(2)*).

At any stage of the proceedings, the arbitral tribunal is entitled to facilitate the parties' endeavours to reach a settlement (*article 28(3)*).

When determining procedural issues throughout the arbitration proceedings, the tribunal will usually issue its procedural decisions in procedural orders. In the interest of efficiency, procedural orders are usually signed by the chairperson only (see also article 35(2)).

Jurisdictional issues

If the respondent wants to raise an objection to the tribunal's jurisdiction, it has to do so no later than the first pleading on the merits (*article 24(1)*). The respondent may choose to ignore the arbitration completely and seek to resist enforcement of any award. However, this might be very risky, as an arbitration may be conducted without the participation of the respondent provided the statement of claim was duly served (*article 29(2)*).

Any plea in relation to the tribunal's jurisdiction should be raised no later than the first plea on the merits (*article 24(1)*). This could take place when filling the answer to the statement of claim or even at a later stage. However, it is advisable to raise such a plea as early as possible. Even at later stages of the proceedings, a party is under a duty to raise any objection if it considers that the tribunal acts beyond the scope of its authority (*article 24(1)*).

Similar to most arbitration laws, an arbitral tribunal has the competence to decide on its own jurisdiction, so-called kompetenz-kompetenz (*article 24(2)*). It is within the tribunal's discretion, subject to any agreement of the parties otherwise (*article 28(1)*) whether it decides on the issue of jurisdiction by way of a separate decision (and thereby having bifurcated the proceedings) or together with the merits of the case in a final award. The tribunal may still decide on the issue of costs even if it declines jurisdiction (*article 24(2)*).

The Vienna Rules do not contain any specific provisions relating to challenging the tribunal's decision on jurisdiction. This will usually depend on the *lex arbitri* as to whether there is a legal remedy available against a separate decision on jurisdiction or only against a decision that also decides on the merits of the case. However, if the arbitration was seated in Austria and the decision on jurisdiction was handed down as an award on jurisdiction in bifurcated proceedings, this award may be challenged with the Austrian Supreme Court.

Statement of claim

After the statement of claim and the answer to the statement of claim have been filed with the Secretariat, it is for the arbitral tribunal (once constituted) to decide on the further conduct of the proceedings, which usually includes a procedural timetable on the filling of further written submissions. Depending on how detailed the statement of claim and answer were in a particular claim, the tribunal may decide that those submissions can be amended at a later stage or it may allow for new submissions on issues of fact or law (as per the tribunal's discretion in article 28).

Documentary evidence

The Vienna Rules do not expressly deal with the procedure for disclosure of documents. However, in most cases, documentary evidence constitutes an important or major part of a party's evidence in proving its case and the tribunal may request the parties to submit evidence (*article 29*). In this regard, VIAC arbitrations with an international flavour are similar to international arbitrations conducted under other institutional rules. Even in cases where most of the parties, counsel and arbitrators have a civil law background, it has become usual practice for parties to request the production of documents from the other side. In determining these document production requests, most arbitrators will seek guidance from the IBA Rules on the Taking of Evidence in International Arbitration, as well as from the so-called Redfern Schedule (see Standard document, Specimen Redfern schedule and drafting note).

Arbitrators will usually request that the parties distinguish between documents of facts and legal authorities when submitting the documents.

In 2018, VIAC introduced its new electronic case management system. This system provides for the electronic submission of statements of claim, requests for mediation and all written communications between the arbitral tribunal and the parties. Therefore, it enables the Secretariat to keep a mirror file in electronic form for each case.

In addition, as of March 2021, the VIAC Portal may be used (see Communications and the VIAC Portal).

Witness and expert evidence

Witnesses of fact and expert witnesses called by the parties

During the proceedings, parties may be represented or advised by persons of their choice (*article 13*). The Vienna Rules do not distinguish between the witnesses and party representatives (such as the executive board members who are authorised to represent a company according to the articles of association) when it comes to questioning persons in the oral hearing. Subject to advance notice, the tribunal may consider pleadings, the submission of evidence, and requests for the taking of evidence to be admissible only up to a certain point in time of the proceedings (*article 29*).

There is no mandatory rule as to which persons may be in the room during the examination of witnesses. Usually, the arbitral tribunal, after consultation with the parties, will make a decision on the presence of persons in the room and the sequence of hearing witnesses. This applies also to expert witnesses called by the parties.

Both the tribunal and the parties may draw guidance from the IBA Rules on the Taking of Evidence in International Arbitration in order to structure and organise the examination of witnesses of fact and expert witnesses. In particular, even in arbitrations where parties, legal counsel and arbitrators are mostly from civil law jurisdictions, the parties will usually submit written witness statements prior to the oral hearing in order for everybody to prepare efficiently for the examination of the respective witness. Also, the parties are usually granted the option to conduct a proper cross-examination of the other party's witnesses (whether fact or expert), followed by questions of the arbitrators.

Experts to the arbitral tribunal

Where necessary, the tribunal may, on its own initiative, collect evidence, question parties or witnesses, request the parties to submit evidence, and call experts (*article 29*). Therefore, the tribunal has the discretion to decide whether it considers a tribunal appointed expert to be necessary. Usually, a tribunal will take such decision after consultation with the parties. The tribunal should inform the Secretary General if such an appointment will cause further costs, so that the funds can be secured by requesting advance payments for the expert's fees and expenses to be paid to VIAC (*article 43(1)*). Alternatively, the parties may also commit to pay the costs directly to the expert. The appointment of an expert must be done for and on the account of the parties (*article 43(4)*).

A feature of the Vienna Rules is the explicit provision that a tribunal appointed expert may be challenged by the parties pursuant to articles 20(1) and (2) (which governs the challenge of arbitrators) by analogy (*article 23*).

Hearing

Unless the parties agree otherwise, the tribunal will decide whether the proceedings will be conducted orally or in writing. If the parties have not excluded an oral hearing, the tribunal must hold a hearing on the request of a party. Having due regard to the views of the parties and the specific circumstances of the case, the arbitral tribunal may decide to hold an oral hearing in person or by other means, that is remotely by using video-conferencing technology (*article 30(1)*).

The parties are free to agree on the place of arbitration but, absent any party agreement, the place of arbitration will be Vienna (*article 25(1)*). However, the tribunal is free to hold the hearing (or any other procedural action) at any place (subject to the applicable *lex arbitri* providing otherwise), even if it is not at the place of arbitration (*article 25(2)*).

Hearings under the Vienna Rules are not open to the public (*article 30(2)*). The tribunal has the power to decide what persons have access to the hearing (parties, their legal counsel, witnesses, service providers and so on).

If an oral hearing is to be held, prior to that hearing, the tribunal will often organise a pre-hearing conference call with the parties in order to discuss organisational matters (such as starting time, breaks, any break-out rooms for the parties) and the procedure itself (whether the parties wish to have oral pleadings, the order of witnesses, the need for interpreters and so on).

The tribunal is responsible for preparing minutes of the hearing, which should include at least a summary of the hearing and its results (*article 30(2)*). In most cases, the tribunal will organise minutes that go beyond that minimum requirement. The method of creating a record of the oral hearing depends on the parties and arbitrators involved, on the language of the proceedings

and the costs that the parties are willing to incur. The most efficient method, but also most costly option, is the engagement of a court reporter. If the hearing takes place in Vienna, there are court reporters available for both English and German language proceedings. However, judges in the Austrian civil courts can also dictate the summary minutes, as long as the parties have no reasonable objection against such a method.

As to the type of place that can be booked for the hearing, the parties and the tribunal are free to agree on a suitable place, including at VIAC or at an external location, such as a hotel or other public organisation or law firm. VIAC's hearing and break-out rooms are located at the Austrian Federal Economic Chamber in Vienna and are equipped with video-conferencing technology; catering can be booked. There can be cost advantages to holding a hearing at these premises in comparison to renting external hearing rooms. In addition, technicians and supporting staff from the VIAC's Secretariat may be present to assist if needed.

It is the tribunal's responsibility that any costs necessary for procedural steps (including costs of hearing rooms, court reporters, interpreters or tribunal appointed experts) are covered in advance. Therefore, the tribunal must notify the Secretary General and arrange for the prospective funds (*article 43(1)*). It is common practice that either the parties pay the respective advances to the Secretariat which administers the funds, or that they jointly agree to pay the external service providers directly.

VIAC as well as other renowned arbitral institutions recommend the increased use of digital means of communication in arbitration proceedings (e.g. electronic case management conferences, filing of submissions etc.). The COVID-19 pandemic has confronted parties and arbitral tribunals with the need to seek for alternatives to in-person hearings. Remote hearings may in many cases be a viable alternative to an in-person hearing. When determining whether to conduct a hearing remotely, several key factors need to be assessed, taking the specific circumstances of the case into consideration.

VIAC in June 2020 released the "Vienna Protocol – A Practical Checklist for Remote Hearings" that may be used for arbitration proceedings administered by any institution and provides useful guidance for parties, counsel and arbitrators when holding remote hearings in times of COVID-19. Parties, counsel and arbitrators are encouraged and recommended to hold a case management conference to discuss the questions raised in the checklists, which can also serve as an agenda for such call.

The protocol encourages arbitrators to apply sensible checks on the use of remote hearings and aims at facilitating the smooth conduct of a remote hearing. It remains the ultimate decision of the tribunal whether to hold a hearing remotely, in a hybrid-form or postpone it, especially if one of the parties is not in agreement with holding a hearing remotely. Such decision has to be based on a case-by-case assessment of the particular circumstances, taking into account the right to be heard and the fair and equal treatment of the parties, at the same time ensuring the efficient and cost-effective conduct of the proceedings (*article 28 (1)*).

See also Standard document, Procedural Order for Video Conference Arbitration Hearings for a sample procedural order addressing issues unique to virtual arbitration hearings.

Closure of proceedings

When the tribunal decides that the parties have had a sufficient opportunity to make submissions and to offer evidence, the tribunal will declare the proceedings closed. The arbitral tribunal may reopen the proceedings at any time (*article 32(1)*).

Awards

The award must be rendered no later than three months after the last hearing on matters to be decided in an award, or the filing of the last authorised submission concerning such matters, whichever is the later. The Secretary General may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative. Exceeding the time limit for the award will not render the arbitration agreement invalid or deprive the arbitral tribunal of its jurisdiction (*article 32(2)*).

The arbitral award will be made in writing and, unless the parties agree otherwise, will state the reasons on which it is based (*article 36(1)*). The award must state the place of arbitration and the date on which it was issued (*article 36(2)*). All original copies of an award will be signed by all arbitrators. If any arbitrator is prevented from signing or refuses to sign the award, the signature of the majority of the arbitrators will suffice (*article 36(3)*). All original copies of the awards are signed by the Secretary General and bear the VIAC stamp and are printed on official VIAC stationary (*article 36(4)*).

The Secretary General shall transmit the award on the parties in hardcopy form. If it is not possible or feasible to serve the award in hardcopy form within a reasonable time, or if the parties so agree, the Secretariat may send a copy of the award in electronic form. In this case, a copy of the award in hardcopy form may be sent at a later stage (*article 36(5)*). Article 12(3), (4) and (5) apply to the effectiveness and date of delivery. The Secretariat will retain one original copy of the award and the documentation of proof of sending.

This is without prejudice to the possibility of obtaining an advance info-copy of the wording of the award without signatures in electronic form upon request.

A party may request that the arbitral tribunal explicitly confirm that the award is final and binding by noting this confirmation on all original copies of the award (article 36(6)). Such confirmation may be of assistance in future enforcement proceedings.

Partial and interim awards

The tribunal is also empowered to render partial and interim awards (including awards on jurisdiction) (see definition of award in article 6(1.8)).

Awards on agreed terms

If the parties jointly request, the tribunal may also render an award on agreed terms or a recorded settlement (*article 37*).

Confidentiality and data protection

The content of the award is confidential. However, the Board and the Secretary General may publish anonymised summaries or extracts of awards in legal journals or in VIAC's own publications, unless a party has objected to publication within 30 days of service of the award (*article 41*). In celebration of its 40th anniversary in 2015, VIAC published 60 abstracts of awards rendered in the past 40 years providing insight into various important and challenging procedural and substantive issues that have arisen in international arbitration under the auspices of VIAC (*Selected Arbitral Awards Vol 1*). Due to its success, a second volume is planned to be published in autumn 2021 in an electronic version only on Kluwer database.

The protection of personal data is of great importance to VIAC. Thus, a privacy statement was introduced in 2019 (which is updated regularly), describing why and how VIAC processes personal data that it collects in connection with its role as an institution administering arbitration and other alternative dispute resolution proceedings (see Arbitration Privacy Policy).

Tribunal secretaries

Tribunal secretaries (otherwise known as administrative secretaries) may be used in arbitration proceedings under the Vienna Rules 2018. Although the rules themselves only briefly mention the tribunal secretary in relation to costs (*article 44(1.1)*), the VIAC Guidelines for Arbitrators set out more detail. According to those guidelines, if the tribunal intends to nominate an administrative secretary, it must inform the parties of this intention, including the name and contact information of the proposed person, along with their CV and a declaration of impartiality and independence of the proposed administrative secretary. The parties will be granted the opportunity to comment on the administrative secretary. The name, contact information and declaration of impartiality and independence of a proposed administrative secretary must 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, 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 expense (*article 44(1.1)*), which must be paid by the parties (through their advance on costs). Therefore, the administrative secretary is not entitled to receive any fees out of the advance on costs; any such payment of fees must be made by the 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 on in the proceedings.

Costs

VIAC conducts compliance verifications and sanctions checks during the whole arbitral proceedings and informs the parties and arbitrators about that process. Any applicable sanctions may affect any payments to be made or requested by VIAC, in particular the potential refund of the advance on costs. In this context, VIAC may at any time during the proceedings require additional information from the parties upon its own initiative or upon its bank's request (or both). Furthermore, VIAC may have to comply with any applicable obligations requiring it to address notifications and requests for authorisation to the relevant regulatory authorities. Insofar as natural persons are involved as parties in this arbitration, their nationalities must be disclosed to VIAC. Therefore, VIAC asks the parties and arbitrators to inform the institution about any sanctions against any person or company involved in the arbitration proceedings so it can adequately conduct the proceedings.

Registration fee

When filing a statement of claim (or counterclaim), the claimant (or counterclaimant) has to pay a registration fee, which is calculated based on the amount in dispute and currently ranges between EUR 500 and EUR 1,500 (see *Annex 3 to the VIAC Rules*). The registration fee is used to cover costs from the filing of the claim (or counterclaim) until the submission of the file to the tribunal. In cases of more than two parties, the registration fee is increased by 10% for each additional

party, to a maximum of 50% (*article 10(2)*). If the fee remains unpaid, the claim will not be forwarded to the respondent and the counterclaim will not be transmitted to the tribunal. The registration fee is non-refundable and it will not be deducted from the paying party's advance on costs.

Advance on costs

Before actual commencement of the proceedings, the parties are requested by the Secretariat to pay an advance on the anticipated costs before the file is transmitted to the tribunal (separately for claims and counterclaims). These advances are to cover the prospective administrative fees, the arbitrator's fees including any applicable value-added tax, possible costs for oral hearings, as well as other expenses (*article 42(1)*). The administrative and arbitrators' fees depend on the amount in dispute; VIAC provides a cost calculator on its website so the parties can estimate these fees in advance (see VIAC: Cost Calculator). However, the cost calculator is only a working tool for parties and interested persons that wish to gain an overview of the expected procedural costs for a VIAC arbitration, with a particular amount in dispute. It does not include the expected expenses for which the Secretariat will add an amount according to its experience.

The advance on costs must be paid by the parties in equal shares within 30 days of service of the corresponding notification (*article 42(4)*). Where counterclaims or claims by way of set-off are submitted and separate advances on costs are fixed, the Secretary General may decide that each party shall pay the advance on costs corresponding to its claims (*article 42(6)*).

If a party fails to pay its share of the advance on costs in full or in part within the set time limit, the Secretary General will request the other party to pay the outstanding amount within 30 days of receipt of such request (*article 42(9)*). If a party fails to fulfil its share of the payment obligations, and if the other party or parties pay their respective share, upon the paying party's request and to the extent it finds that it has jurisdiction over the dispute, the arbitral tribunal may order the non-paying party, by an award or other appropriate form, to reimburse the paying party or parties for the accruing amount. This shall not affect the arbitral tribunal's authority and obligation to determine the final allocation of costs pursuant to article 38 (*article 42(10)*).

This system ensures that the total expected procedural costs will be fully paid in advance, so that the proceedings will not be delayed later for financial reasons or, in the worst case, that the proceedings will have to be terminated due to lack of funds.

In principle, the arbitral tribunal shall only address the claims or counterclaims, for which the advance on costs has been paid in full. If a payment is not made within the deadline set by the Secretary General, the arbitral tribunal may suspend the arbitral proceedings in whole or in part, or the Secretary General may terminate the arbitral proceedings (*article 34(3)*) with respect to the relevant claims. This shall not prevent the parties from raising the same claims at a later time in another proceeding (*article 42(11)*).

Additional procedural costs

The Secretary General can also request an additional advance on costs in cases of unforeseen developments or where there has been an increase of the amount in dispute, and it can set a deadline for its payment. For instance, if the tribunal considers necessary, where certain procedural steps arise that will require more funds, it will inform the Secretary General to arrange for these prospective costs to be covered (*article 43(1)*).

Multi-party disputes

In multi-party proceedings, one half of the advance on costs should be paid jointly by the claimants and one half jointly by the respondents, unless otherwise determined by the Secretary General having regard to the circumstances of the case (*article 42(5)*). The parties on each side are jointly and severally liable to pay the advance on costs. The advance on costs must be paid in equal shares by each side before the transmission of the file within 30 days after the payment order has been served (*article 42(4)*).

Award on costs

When the proceedings are terminated, and if a party requests, the tribunal shall set forth, in the final award or by separate award, the costs of the arbitration as determined by the Secretary General pursuant to article 44(1.1) and determine the amount of the appropriate costs of the parties pursuant to article 44(1.2), as well as other additional expenses pursuant to article 44(1.3) (*article 38(1)*).

Upon request by a party, the arbitral tribunal may also, at any stage during the arbitral proceedings, make decisions on costs pursuant to article 44(1.2) and (1.3) and order payment (*article 38(3)*).

The costs incurred by the tribunal and VIAC are determined based on the amount in dispute, in accordance with the Schedule of Costs in Annex 3 of the Vienna Rules. The Secretary General has discretion to increase or decrease the arbitrator's fees up to 40% in case of efficiency or complex cases or, conversely, for inefficient conduct of proceedings (*article 44(8)*). These costs are calculated by the Secretary General at the end of the proceedings and

communicated to the tribunal to be included in the award (*article 44(2)*). The other costs are determined and fixed by the tribunal itself (*article 38(1)*).

The tribunal will determine the parties' costs and other additional expenses and it will decide who will bear the costs of the proceedings, or the apportionment of these costs. Unless the parties have agreed otherwise, the tribunal will decide on the allocation of costs according to its own discretion. The conduct of any or all parties as well as their representatives, 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 (*article 38(2)*).

In VIAC arbitration there is a binding schedule of fees, so the costs are predictable. The administrative and the arbitrators' fees are calculated on an ad valorem basis with reference to the amount in dispute according to Annex 3 of the Vienna Rules, and vary depending on the number of arbitrators. Therefore, it is advisable to include the amount in dispute and the number of arbitrators in the statement of claim so the Secretary General can calculate the advance on costs.

The composition and calculation of the procedural costs is provided in article 44. The procedural costs consist of:

- The administrative fees of VIAC.
- The arbitrators' fees.
- Any value-added tax on arbitrators' fees.
- Cash outlay (for example, travel expenses of arbitrators).
- The costs of ancillary services, such as hearing room rents or video-conferencing technology, overnight courier services, minor cases of court reporting.
- The parties' costs, that is, the reasonable expenses of the parties for their legal representation.
- Other costs, such as experts' and interpreters' fees, technical support, the costs for verbatim transcripts and site visits.

Post-award

If there are any computational, typographical, printing or similar errors in the award, a party can file an application within 30 days of receipt of the award that the arbitral tribunal correct the award (*article 39(1)(1.1)*). A party can also request that the tribunal clarify specific parts of the award (*article 39(1)(1.2)*) or render an additional award on claims made in the arbitration but not addressed in the original award (*article 39(1)(1.3)*).

Before the tribunal decides, it must grant the other parties the right to be heard and set a time limit (usually no more than 30 days) for comments on any possible corrections or supplementations (*article 39(2)*). Corrections and clarifications will be issued in the form of an addendum and will constitute an integral part of the original arbitral award. Supplementations are separate awards to which article 36 applies mutatis mutanda and therefore separate time limits for setting aside proceedings also apply.

The tribunal may also correct any errors or issue supplementations on its own initiative within 30 days of the date of the award (*article 39(3)*).