





These Guidelines serve to facilitate the co-operation between mediators 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 Mediation 2021 (“Vienna Mediation Rules” or “VMR”) and VIAC Rules of Investment Mediation 2021 (“Vienna Investment Mediation Rules” or “VMRI”). References in these Guidelines to “Articles” without further specification relate to the relevant articles of the Vienna Mediation Rules and the Vienna Investment Mediation Rules. Reference to the VIAC Rules of Arbitration 2021 (“Vienna Rules”) is made with the abbreviation “VR”.

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](mailto:office@viac.eu). In addition, our website [www.viac.eu](http://www.viac.eu) contains plenty of information.



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# GUIDELINES FOR MEDIATORS

## I. MEDIATION PROCEEDINGS

### 1. CASE ADMINISTRATION BY VIAC

The Secretariat (Art. 4 VR) manages the administrative matters of the VIAC except for matters reserved to the VIAC Board (Art. 2 VR). The Secretariat of VIAC is overseen by the Secretary General, Niamh Leinwather, and the Deputy Secretary General, Elisabeth Vanas-Metzler. You can find profiles of all members of the Secretariat and the Board on our website ([www.viac.eu](http://www.viac.eu)).

Each mediation case receives a case number starting with the prefix “MED” (mediation proceedings acc. to the Vienna Mediation Rules or “IMED” (mediation proceedings acc. to the Vienna Investment Mediation Rules) 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. APPOINTMENT OF THE MEDIATOR AND TRANSMISSION OF THE FILE

A mediator is appointed based on the joint nomination by the parties and subsequent confirmation by the Secretary General / Board or based on direct appointment by the Board. The designated mediator shall submit a declaration in accordance with Art. 7 para. 3 (“Declaration of acceptance”) prior to appointment.

The Secretary General transmits the file to the mediator only once a request in accordance with the requirements of Article 3 has been submitted, the mediator has been appointed, and the preliminary advance on costs pursuant to Art. 8 para. 1 has been paid in full (Art. 9). Upon the transmission of the file, the mediator commences its conduct of the proceedings.

### 3. SUBMISSION OF WRITTEN COMMUNICATIONS TO THE SECRETARIAT - VIAC PORTAL

In March 2021, VIAC introduced the VIAC Portal – an online case management platform hosted on HighQ, a cloud-based file sharing and collaboration software operated by Thomson Reuters. On the Portal, a separate case site will be opened for each case. The mediators will receive an invitation to the VIAC Portal by e-mail from the VIAC Secretariat as part of the transfer of the file (Art. 9 para. 1). The transfer of the file will then be carried out using the VIAC Portal, in principle.

Prior to the transfer of the file to the mediator, all written communications and exhibits between the parties and the VIAC Secretariat will, in principle, be transmitted via the VIAC Portal. Upon the transfer of the file, the mediator shall determine the means of communication between the parties and the mediator. The mediator shall decide together with the parties during the first session to what extent the VIAC Portal should be used, and in particular, which set of modules should be used. The mediator and the parties are encouraged to use the VIAC Portal to the fullest extent possible; the VIAC Secretariat will be happy to assist.

Depending on the determined method of communication, the correspondence with VIAC is carried out via the VIAC Portal or in another electronic form, following the transfer of the file.

The manner of transmission according to the applicable VIAC Rules (Art. 12 para. 3) shall remain

unaffected by the introduction of the platform, i.e. written communications can continue to be sent in one of the forms specified therein, e.g. also by e-mail (if addressed to VIAC, please send to [office@viac.eu](mailto:office@viac.eu)). Electronic transmission via the VIAC Portal is now the preferred form of transmission. In particular, in the event of technical problems with the VIAC Portal, users are requested to contact us immediately in order to solve the problem or discuss an alternative form of transmission.

For more information about the characteristics and functionality, you can read the [Guidelines and the User Manual \(https://www.viac.eu/images/Portal/Guidelines\\_User\\_Manual\\_VIAC\\_Portal.pdf\)](https://www.viac.eu/images/Portal/Guidelines_User_Manual_VIAC_Portal.pdf) or contact the VIAC Secretariat.

#### 4. MODALITIES OF THE SESSIONS

The mediator shall, in consultation with the parties, determine the place of the mediation sessions (Art. 5). It is also possible to conduct the proceedings by virtual means (Art. 9 para. 3).

To the extent mediation sessions with parties take place in Vienna, they can be held either at the seat of VIAC in the premises of the Austrian Federal Economic Chamber or any other location.

If conference 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. We will then also inform you of the Covid regulations in our building applicable at that time.

#### 5. CONDUCT OF THE PROCEEDINGS

The mediator shall promptly discuss with the parties the manner in which the proceedings shall be conducted. Immediately after transmission of the file, the mediator, after consultation with the parties and giving due consideration to all the circumstances, shall also determine the language(s) of the proceedings (Art. 6).

The mediator shall assist the parties in finding an acceptable and satisfactory solution for their dispute. In conducting the proceedings, the mediator shall be in control of the proceedings while letting himself be guided by the wishes of the parties insofar as they are in agreement and in line with the purpose of the proceedings. Sessions with the mediator are not public. Sessions with a party in the absence of the other party (*caucus*) are permissible; the mediator shall keep confidential the information given by one party in the absence of the other party, unless the party giving the information expressly waives such confidentiality vis-à-vis the other party and the mediator agrees to pass on such information (Art. 9).

#### 6. ADDITIONAL MEDIATORS

In principle, several mediators can be involved in one case. On the one hand, the parties may freely decide on the number of mediators and, on the other hand, the mediator may wish to have a co-mediator due to the complexity of the case or for some other reason. In this case, he will inform the parties accordingly and also propose a suitable person. However, in order to comply with the principle of voluntariness, the parties must agree on the appointment of a second mediator and on his person. Any co-mediator has to be confirmed by the Secretary General or the Board.

## 7. CLOSURE OF THE PROCEEDINGS

The proceedings shall be terminated by way of a written confirmation by the Secretary General to the parties (Art. 11). This requires that the mediator informs the Secretary General in case a settlement agreement has been concluded, in case a party does not wish to continue the proceedings, in case the mediator is of the opinion that the proceedings will not resolve the dispute between the parties or in case the proceedings have been terminated (Art. 11 para. 1.1-1.4).

The result of the mediation is not to be sent to the Secretariat in advance for review, and the Secretariat does not gain knowledge of the outcome of the mediation. Should the parties require proof of the termination of the mediation proceedings, the written confirmation by the Secretary General shall serve for this purpose.

## II. COSTS

### 1. COMPOSITION OF THE PROCEDURAL COSTS

The procedural costs (Art. 8 para. 4) consist of the administrative fees of VIAC, the mediator's fees and reasonable expenses (Art. 8 paras. 5 and 6; see also the schedule of fees in Annex 3), including any applicable value-added tax (VAT); the parties' costs (Art. 8 para. 7); and other expenses.

### 2. ADVANCE ON COSTS

For the calculation of the advance on costs, the Secretariat considers the administrative fees of the VIAC as well as a down payment on the mediator's fees including any applicable value-added tax and estimates the costs for oral hearings as well as other expenses (see Art. 8 para. 1).

The [cost calculator](https://www.viac.eu/en/mediation/cost-calculator) (<https://www.viac.eu/en/mediation/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.

For information on value-added tax (VAT) on mediation fees, see point II. 8.

### 3. ADVANCE ON COSTS FOR ADDITIONAL PROCEDURAL COSTS AND CONSEQUENCE OF NON-PAYMENT

If the mediator 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 site visit or relocation of the hearing), then the mediator shall notify the Secretary General and arrange for these prospective costs to be covered by the parties (Art. 43 VR by analogy). The Secretary General may also, on her own initiative, collect a further advance on costs, if necessary, in particular to cover the mediator's fee and the expected cash outlays of the mediator (Art. 8 para. 3).

The mediator may undertake such procedural steps only once the prospective costs are sufficiently covered. VIAC does not assume liability for costs resulting from mediators' dispositions without being covered by parties' advance payments.

### 4. ADMINISTRATIVE COSTS

The Secretary General calculates the administrative fees according on the basis of the schedule of fees (Annex 3). The preliminary advance on costs requested by the Secretary General for the estimated administrative costs shall be calculated on the basis of the amount in dispute stated in the mediation request. The Secretary General may determine the amount in dispute differently from the information provided by the parties if the amount in dispute is clearly incorrect or has not been assessed by the parties. In order to be able to request additional advances on costs from the parties, if necessary, we kindly ask the mediator to inform the Secretariat immediately of any changes in the amount in dispute.

If the amount in dispute is denominated in a currency other than Euro, the Secretariat will convert this amount into Euro as of the date on which the mediation request is submitted.

### 5. MEDIATORS' FEES

The mediators' fees are calculated according to the actual expenditure of time on the basis of hourly or daily rates. We kindly ask you to indicate your hourly or daily fee rate to the Secretary General prior to your appointment.

The fee rates shall be fixed by the Secretary General after having consulted you and the parties. The Secretary General shall consider the adequateness of the fees and the complexity of the dispute. An hourly fee between EUR 100 - 500 is considered as adequate.

Any separate fee arrangements between the mediator and the parties are strictly forbidden.

## 6. DETERMINATION OF THE ADMINISTRATIVE AND MEDIATOR'S FEES UPON TERMINATION OF THE PROCEEDINGS

Pursuant to the Vienna Mediation Rules, the determination of the administrative fees (according to the amount in dispute on the basis of the schedule of fees (Annex 3)) and the mediator's fees (on the basis of the agreed hourly or daily rate) rests exclusively with the Secretary General, who calculates them upon closure of the proceedings together with the expenses (Art. 8 para. 4). The decision of the Secretary General is binding.

Thus, you are kindly requested to inform the Secretariat upon closure of the proceedings of your hourly records and all cash outlays that have not yet been reimbursed, to enable the Secretary General to determine these costs.

If, after deduction of the above mentioned costs 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 mediator is kindly asked to inform the Secretariat accordingly.

## 7. REIMBURSEMENT FOR EXPENSES

The preliminary advance on costs paid by the parties includes an amount reserved for cash outlays in accordance with Art. 8 para. 1, which is calculated by the Secretary General based on the experience gained from previous cases.

Reasonable expenses of the mediators, such as e.g. travel and living costs, costs for communications services and other case-related costs, will be reimbursed upon receipt of invoices. For that matter, e.g. cash outlays for courier services, mailings, telephone conferences organized by a provider etc. are refundable; e.g. cash outlays for skype calls or emails are, however, non-refundable.

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 mediators is € 150.00. 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. Fares for necessary taxi (cab) rides will be refunded upon receipt of the bills. If a mediator 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.

The above rates include all potential taxes and charges.

As a certain administrative infrastructure is a prerequisite for a mediator, 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 mediators 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 mediator.

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 MEDIATION PROCEEDINGS

With regard to value-added tax (VAT) on mediators' fees, the services of the mediator shall be deemed to have been rendered equally to all parties. Therefore, the mediator's fee is always charged in equal shares to parties since the mediator'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 the 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 II.5. above) paid by the institution to a mediator 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 a mediator 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 a respective mediator in a particular case may be treated differently from a tax point of view to the fees of another mediator in that case, but also that the respective shares paid in advance by the respective parties, will be subject to different levels of VAT or may even be exempt from tax.

In order to enable the Secretary General to correctly calculate the applicable value-added tax, the mediator is obliged to disclose the expected amount of the applicable tax rate (Art. 44 para. 13). 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.

Since the question of VAT (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 mediator at the beginning of the proceedings (preferably in the first session) and discussed with the parties. In any case, the mediator should request the parties' VAT identification number at the beginning of the proceedings.

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





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