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Vienna International Arbitral Centre's (VIAC) New Arbitration Rules

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Introduction

A new version of the so-called “Vienna Rules” came into force on 1 July 2013. Due to practitioners’ broad acceptance of the Vienna Rules 2006, changes were made only with regard to specific matters. The major focus of the amendments lies on expediting the arbitration proceedings and addressing cost-related issues.

A group consisting of both academics and practitioners worked approximately one and a half years on revising the Vienna Rules 2006. To evaluate where a need for improvement existed, VIAC launched an international survey which established that both the flexibility and simplicity of the Vienna Rules use were highly appreciated in practice.

On 8 May 2013, the extended chair of the Austrian Federal Economic Chamber approved the amended version of the rules.

Overview about the main amendments

One of the most important changes deals with the joinder of third parties (Art 14) and the consolidation of arbitration proceedings (Art 15). After hearing all persons involved plus considering all relevant circumstances the arbitration tribunal upon request of a party or the third party decides about the admissibility of a joinder. Two or more arbitration proceedings can be consolidated on the request of a party if the parties agree to do so or the same arbitrator(s) were nominated or appointed. The latter is decided by the Board of VIAC.

Another major reform deals with multi-party arbitrations and especially with the constitution of the arbitration tribunal. In addition to the regular provision on the constitution of the tribunal (Art 17), Art 18 provides that in the case of a panel of arbitrators each side – claimant or respondent – shall jointly nominate their arbitrator. Nevertheless, this participation in the joint nomination does not constitute consent to multi-party arbitration. If one side is delayed in appointing an arbitrator, such arbitrator will be appointed by the Board of VIAC.

A novelty for VIAC arbitrations has been implemented in Art 19 dealing with the confirmation of an arbitrator’s nomination. After an arbitrator has been nominated, the Secretary General of VIAC

confirms his nomination if no doubts exist as to the arbitrator's impartiality or independence. The arbitrator shall be deemed appointed only once this confirmation has been provided.

Under the catchword "expediting measures", several provisions aim to accelerate arbitration proceedings under the Vienna Rules 2013. For instance, Art 21 para 2 regulates the possibility that each party may request the removal of an arbitrator who is prevented from exercising his task for more than a temporary period.

The arbitration tribunal will close the proceeding once it is convinced that all parties have had an adequate opportunity to make submissions and to offer evidence. At that point, the arbitration tribunal informs the Secretary General and the involved parties of the anticipated date by which the final award will be rendered (Art 32).

Art 45 separately regulates the expedited procedure. The supplementary rules on expedited proceedings apply in the case the parties have included them in their arbitration agreement or if the parties subsequently agree on their application. The main difference to the regular proceeding is a shortening of deadlines for several procedural acts.

With regard to the costs of the proceeding, two amendments deserve to be mentioned: The Registration Fee was decreased to EUR 1,500, but now is not refundable and can no longer be deducted from the party's advance on cost (Art 10). According to Art 42 para 4, the arbitration tribunal has the power to order reimbursement of costs by a separate decision if one party has fulfilled payment obligations of another party. Such decision does not affect the arbitration tribunal's authority and obligation to determine the final allocation of costs.

Finally, one further new provision deserves to be mentioned. Art 40 provides that a state court – e.g. in the context of an annulment proceeding – may remit proceedings to the arbitration tribunal. In the Austrian Act of Civil Procedure, such a possibility is not foreseen by law. Hence, such remission by a state court can only be made if the parties have agreed on a seat of arbitration outside Austria, the application of the Vienna Rules and the arbitration law at the seat of arbitration allows for such remittance.

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