

Kluwer Arbitration Blog

VIAC Rules Revision 2021 Part I: Revised Vienna Rules Enter into Force on 1 July 2021

Johanna Kathan-Spath, Alice Fremuth-Wolf (Vienna International Arbitral Centre-VIAC) · Thursday, July 1st, 2021

The Vienna International Arbitral Centre (“**VIAC**”) announces its most recent update to the VIAC Rules of Arbitration and Mediation (the **VIAC Rules of Arbitration and Mediation 2021**) taking effect on 1 July 2021.

The revision of the VIAC Rules of Arbitration and Mediation was triggered by the drafting of the new standalone set of **VIAC Rules of Investment Arbitration and Mediation** that will likewise enter into force on **1 July 2021**. This was taken as an opportunity to adapt the existing arbitration rules for commercial disputes (the “**Vienna Rules**”) to new needs and developments in the market and to open up a new field of business, namely disputes relating to succession, by appending a new annex. Both sets of rules apply to all proceedings commenced after 30 June 2021, respectively.

A **working group** consisting of representatives of the VIAC Board and Secretariat as well as the National and International Advisory Board has drafted the amendments of the VIAC Rules (in alphabetical order: *Claudia Annacker, Alice Fremuth-Wolf, Günther Horvath, Johanna Kathan-Spath, Stephan Karall, Werner Jahnel, Christian Koller, Paul Oberhammer, Patrizia Netal, Michael Nueber, Nikolaus Pitkowitz, Dietmar Prager, Lucia Raimanova, Stefan Riegler, Franz Schwarz, Irene Welser, Nathalie Voser, Britta Zöchling-Jud*). The working group has met regularly over the course of more than a year to discuss how to codify existing practices, streamline procedures, and respond to users’ demands. On 2 June 2021, the Extended Presiding Committee of the Austrian Federal Economic Chamber approved the amended version of the rules. The new version of the VIAC Rules of Arbitration and Mediation 2021 are now available on the [VIAC website](#).

The modifications to the 2018 version of the Vienna Rules for commercial disputes were limited to specific matters with the principal aim of bringing the rules in line with modern international arbitration trends.

Key features of the Vienna Rules 2021

Amendments reflecting new developments

Article 1 para 1 has been amended to explicitly include VIAC’s authority to administer investment

proceedings as well as to act as appointing or administering authority in ad hoc proceedings and to administer proceedings based on unilaterally foreseen arbitration agreements.

Since third-party funding is no longer limited to impecunious parties but is more widely used, a definition of TPF was considered useful which is contained in Article 6 paragraph 1.9. The new Article 13a contains further provisions on third-party funding in order to create the framework for this instrument, mainly to ensure the independence and impartiality of the arbitrators through appropriate disclosure.

The new Annexes 4 and 5 contain detailed rules for cases in which VIAC is requested to act as appointing or administering authority in ad hoc proceedings (such as the UNCITRAL Arbitration Rules).

A new Annex 6 contains supplementary rules for disputes relating to succession, which take into account the unique characteristics of arbitration proceedings foreseen in a disposition of property upon death.

Amendments reflecting technical innovations and the introduction of the VIAC Portal

Even if this was already possible under the 2018 version of the Vienna Rules, Article 30 now explicitly states that oral hearings may be conducted in person or by other means (e.g. [remote via videoconferencing technology](#) – for further information, see the [“Vienna Protocol – A Practical Checklist for Remote Hearings”](#)); the arbitral tribunal shall decide on this, taking into account the views of the parties and the particular circumstances of the case.

Taking account of the increased use of video-conferencing technology during the pandemic, Article 36 paragraph 5 of the 2021 Rules now expressly provides that the Secretary General, *“if it is not possible or feasible to send the award in hardcopy form within a reasonable time, or if the parties so agree (...) may send a copy of the award in electronic form”*. A copy of the award in hardcopy form may be sent at a later stage in order to ensure enforcement of the award where such enforcement is sought in a jurisdiction where there is a risk that courts would not accept a copy of an electronic award as a *“duly authenticated original award”* in the meaning of Article IV(1)(a) of the New York Convention.

Other amendments further enhancing the efficiency of the proceedings

In order to encourage settlements and thus an efficient resolution of the dispute, it is now expressly stated in Article 28 para 3 that the arbitral tribunal is entitled at any time during the proceedings to assist the parties in their endeavors to reach a settlement.

A further key amendment to increase the efficiency of the proceedings has been included in Article 32, which now foresees a time limit for the issuance of the award in paragraph 2, i.e. the award shall be rendered no later than three months after the last hearing concerning matters to be decided in an award or the filing of the last authorized submission concerning such matters, whatever is the later. The Secretary General may extend this period upon reasoned request or on its initiative.

Amendments in the provisions on costs

With regard to the determination of costs of the proceedings, three amendments deserve to be mentioned: First, the arbitral tribunal may now, at any stage of the arbitral proceedings, at the request of a party, make a decision on costs pursuant to Article 44 paragraphs 1.2 and 1.3 (i.e. all costs except for the administrative and arbitrator's fees) and need not wait for the final award in this respect (Article 38 paragraph 3).

Secondly, in determining the advance on costs as well as the arbitrator's fees, the VIAC Secretary General now has greater flexibility to address the high complexity of proceedings, especially in multiparty scenarios.

Finally, the Schedule of Fees in Annex 3 has been revised after 8 years (last in 2013 with minor changes in 2018). While the registration fee and administrative fees for low amounts in dispute have remained the same, the administrative fees for amounts in dispute above EUR 100,000 as well as the arbitrators' fees for amounts in dispute above EUR 200,000 have been raised to reflect the increased complexity in proceedings as well as the extended services of VIAC (HighQ file sharing platform, electronic case management database, etc.). Nonetheless, VIAC remains very attractive for parties in terms of costs compared with other institutions but ensures that arbitrators are remunerated fairly for demanding proceedings with high amounts in dispute.

Conclusion

The update strikes a balance between modernizing the arbitration rules and at the same time maintaining the flexibility and predictability of the VIAC Rules. The amendments reflect practices that have proven effective in institutional arbitration in general and the best practices of VIAC itself. This reform should thus help the VIAC to foster its position as one of Europe's leading arbitral institutions for the CEE/SEE and CIS region, offering its services in resolving international commercial as well as investment disputes.

Johanna Kathan-Spath is legal counsel at the VIAC Secretariat and was responsible for overseeing the whole revision process including the drafting of the new Investment Rules.

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