

# Vienna International Arbitral Centre issues new arbitration and mediation rules

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## Introduction

### Overview of new rules

### Comment

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On January 1 2018 the new Vienna International Arbitral Centre (VIAC) Rules of Arbitration and Mediation (VIAC Rules 2018)<sup>(1)</sup> entered into force. They apply to all arbitration and mediation proceedings initiated after December 31 2017. The VIAC Rules 2018 are divided into three parts:

- the Rules of Arbitration (the Vienna Arbitration Rules);
- the Rules of Mediation (the Vienna Mediation Rules); and
- annexes (including model clauses and fee schedules).

## Overview of new rules

This new threefold division of the VIAC Rules 2018 ensures that the Vienna Arbitration Rules and the Vienna Mediation Rules are now formally recognised on an equal basis. In addition, the revised rules now explicitly address gender diversity by stating that the terms of the VIAC Rules 2018 must be used in a gender-specific manner when addressing (third) parties and arbitrators.

The introduction of the VIAC Rules 2018 has also led to a clarification of the VIAC's role, as the rules expressly stipulate that the VIAC is the permanent international arbitration institution of the Federal Economic Chamber.

Under the rules, the VIAC can now administer purely domestic arbitration and mediation cases. Until now, domestic cases were exclusively administered by regional economic chambers. Currently, the VIAC and regional economic chambers both have jurisdiction, meaning that proceedings may be initiated and administered by the VIAC or the competent regional economic chamber. However, as of July 1 2018 the VIAC will have exclusive competence to administer purely domestic cases.

One major advantage of arbitration and mediation proceedings initiated under the VIAC Rules 2018 is that all proceedings are supported by an electronic case management system. Therefore, arbitration and mediation proceedings can be initiated by submitting a statement of claim or request through an electronic form. Nonetheless, in arbitration proceedings, the statement of claim and all exhibits submitted with the statement of claim must still be submitted to the VIAC in hard copy, with as many duplicates as deemed necessary (Article 12(1) of the Vienna Arbitration Rules). However, after the file has been transmitted to the arbitral tribunal, all written communications between the parties and the arbitral tribunal must be submitted to the VIAC through an electronic form; this format is intended to simplify the VIAC's administration process and support parties to the proceedings.

Additionally, the revised Vienna Arbitration Rules provide for significant amendments regarding the cost regime for arbitration proceedings. This was already reflected in Article 28 of the Vienna

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Arbitration Rules, which explicitly stipulates that the proceedings must be conducted in an efficient and cost-effective manner. According to Article 16(6) of the Vienna Arbitration Rules, both compliance and violations of this principle can be considered when determining the arbitrators' fees and costs.

On the other hand, the Vienna Arbitration Rules now also provide the VIAC secretary general with more flexibility if an analysis requires higher or lower arbitrator fees, particularly in more complex cases or in case of efficient or (as the case may be) inefficient conduct of the proceedings. Therefore, pursuant to Article 44(7) of the Vienna Arbitration Rules, the VIAC secretary general may increase or decrease arbitrators' fees by no up to 40% at his or her discretion, based on the fee schedule (Annex 3). The fee schedule in Annex 3 of the VIAC Rules 2018 has also been amended with regard to registration fees and administrative fees (ie, these fees have been reduced for low-cost disputes and increased for disputes exceeding €75,000).

Further, Article 33(6) of the Vienna Arbitration Rules now allows for the respondent to request that the arbitral tribunal order the claimant to provide a security for costs. The respondent merely needs to present sufficient cause that the recoverability of a potential claim for costs is at risk. This provision also applies if a counterclaim is filed by the respondent in the arbitration proceedings. If the arbitral tribunal orders the claimant to provide a security for costs, non-compliance could lead to a suspension or termination of the arbitration proceedings (Article 33(7) of the Vienna Arbitration Rules).

In addition, the Vienna Arbitration Rules now acknowledge that an arbitral tribunal can appoint a secretary to support and assist the tribunal. This acknowledgement is set out in Article 44(1)(1.1) of the Vienna Arbitration Rules, which stipulates that the procedural costs of arbitration proceedings also comprise the tribunal secretary's travel and subsistence costs. However, it should be noted that the tribunal's secretary is not entitled to remuneration (above travel expenses and subsistence costs).

Regarding the Vienna Mediation Rules, the most significant amendment is that the VIAC Rules 2018 allow for a combination of arbitration and mediation proceedings (Article 10 of the Vienna Mediation Rules). Further, the VIAC Rules 2018 provide the possibility for an award on agreed terms to be rendered (Article 37 of the Vienna Arbitration Rules). In the case of agreements that were negotiated during mediation proceedings, arbitration proceedings must have already been pending before mediation was initiated.

## **Comment**

The amendments to the VIAC rules allow for parties that agree on the applicability of the rules to conduct efficient and cost-effective arbitration and mediation proceedings, while offering enough flexibility when applying them in individual cases.

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## **Endnotes**

(1) Please see [www.viac.eu/images/Wiener\\_Regeln\\_2018\\_Brosch%C3%BCre\\_en\\_Onlinefassung\\_Einzelseiten\\_20171219.pdf](http://www.viac.eu/images/Wiener_Regeln_2018_Brosch%C3%BCre_en_Onlinefassung_Einzelseiten_20171219.pdf).

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