

Arbitration - Austria

New Vienna Rules geared to modernise arbitration

Contributed by **Graf & Pitkowitz Rechtsanwälte GmbH**

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Introduction

In 2012 the Vienna International Arbitral Centre initiated a comprehensive review process aimed at modernising, overhauling and streamlining its rules. The process included a widely distributed user survey, a number of discussion rounds and a roadshow. The process is finally nearing completion and the centre is preparing to release the revisions publicly.

General approach

The rules were first enacted in 1975. Since their inception, they have been characterised as lean and flexible. During the last decade, the number of proceedings at the centre have doubled. New trends have emerged, most notably an increase in multi-party proceedings. The revision commission considered whether a complete overhaul was warranted in light of the recent trends, or whether the existing character of the rules could be maintained. Given the overwhelming positive feedback it received in relation to the existing rules, the reform commission decided to maintain the lean and flexible approach. The length of the rules has therefore remained essentially unchanged. However, many provisions have been streamlined and simplified, and several new provisions have been added. The most significant changes are detailed below.

Main changes to rules

Joinder of third parties

The arbitral tribunal has the authority to order the joinder of third parties at the request of either party or the third party itself. The tribunal is thereby granted wide discretion, provided that it has heard all parties and the third party to be joined. Joinder can be approved as a party with full party status, but also in other ways (eg, as *amicus curiae*). The new rules will also permit a cross claim against the party to be joined, thereby also recognising that party's right to participate in the formation of the arbitral tribunal.

Consolidation of proceedings

Another provision will be added permitting the consolidation of two or more proceedings. The decision on consolidation will be made by the centre's executive board after having heard the parties and the arbitrators.

Confirmation of arbitrators

Under the new rules all arbitrators must be confirmed by the secretary general.

Multi-party proceedings

In line with established principles under the present rules, the principle of party autonomy in multi-party proceedings will prevail. If one party or a group of parties fails to agree on a nominee to be confirmed as arbitrator, the failure to reach agreement will not automatically invalidate the nomination by the other side. The centre's board has the authority to replace an arbitrator already appointed only in exceptional cases.

Remission

The new rules also regulate cases in which a court refers proceedings to an arbitral tribunal, as contemplated under Article 34(4) of the United Nations Commission on International Trade Law Model Law. This provision already anticipates the expected change to the Arbitration Act, under which annulment proceedings will be directly lodged with the Supreme Court.

Costs

The system of flat-rate costs (as compared to hourly rates for arbitrators) has remained unchanged, as it provides parties with a better opportunity to plan ahead and has proven to be an incentive for arbitrators to streamline proceedings. The centre's cost scale, which is on the moderate side internationally, has been slightly amended to permit more flexibility, especially for arbitrators' fees in complex matters.

The new rules will contain an explicit obligation of both parties to fund jointly the costs of the arbitration and provide the arbitral tribunal with the power to direct the defaulting party to pay its share of the cost advance.

Expedited proceedings

The new rules contain specific fast-track regulations. However, these will become applicable only if the parties explicitly agree to them under an opt-in mechanism. The average duration of proceedings is one year. For expedited proceedings, a final award must be rendered within six months (unless extended).

Comment

The new rules are expected to enter into force in the second half of 2013. Feedback to the draft rules received in various discussion rounds and roadshows, both in Austria and abroad, indicates that the difficult task of governing complex matters in an easy understandable lean and flexible framework has been well achieved.

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