

## VIAC Rules of Arbitration and Conciliation 1983

### **General Provisions**

#### Jurisdiction

##### **Article 1**

The Arbitral Centre of the Federal Economic Chamber in Vienna (hereinafter called the Arbitral Centre) shall have jurisdiction insofar as the subject-matter is concerned to settle disputes of an economic nature if at least one of the parties has its place of business outside the territory of the Austrian republic.

##### **Article 2**

The Arbitral Centre shall have jurisdiction if the parties have provided in writing or in telegrams or telex, which they have exchanged, to have recourse to it or if they declare jointly in writing that they agree to submit to it.

##### **Article 3**

Arbitrations shall take place at the seat of the Arbitral Centre in Vienna. Nevertheless, upon joint request of the parties the Presidium can fix the place of the proceedings elsewhere, either within or without the frontiers of Austria.

#### Organization

##### **Article 4**

The Arbitral Centre shall be made up of the Presidium, the Secretariat, sole arbitrators or arbitral tribunals.

##### **Article 5**

1. The Presidium is made up of a Chairman, three other members and the Secretary of the Arbitral Centre. The members of the Presidium are appointed for five years by the Board of the Federal Economic Chamber. They can be re-elected.
2. The meetings of the Presidium are presided over by the Chairman and, in his absence, by the Secretary. The Presidium can validly take decisions when three of its members are present. Decisions are taken by a majority, the Chairman having a casting vote.

##### **Article 6**

The administrative tasks of the Arbitral Centre are undertaken by the Secretariat under the direction of the Secretary.

## Arbitrators

### **Article 7**

1. There can be appointed as arbitrators persons who have specific knowledge and experience in legal and economic matters. Austrian nationality is not required. The names of persons qualified to act as arbitrators may be placed upon a list of arbitrators kept by the Secretary.

The Presidium decides upon any addition or deletion.

2. The exercise of the functions of arbitrator is not subject to being included in the list of arbitrators. Insofar as the present Rules authorize them to nominate arbitrators, the parties, the arbitrators nominated by them and the Presidium may choose or appoint any person fulfilling the conditions set forth in section (1).

3. The members of the Presidium may only exercise the function of Chairman of an arbitral tribunal or, if so proposed by all the parties, of sole arbitrator.

4. The arbitrators are not bound by any directives and must exercise their functions according to their best conscience. They are bound to observe absolute secrecy in respect of the proceedings.

## Conciliation Procedure

### **Article 8**

At the request of a party, a conciliation procedure can be undertaken where the Arbitral Centre has jurisdiction insofar as the subject-matter is concerned. Such procedure can only take place where the opposing party or parties agree to it. It is not subject to the existence of a valid arbitration clause.

### **Article 9**

The party which wishes to have recourse to conciliation sends its request to the Secretariat of the Arbitral Centre. The Secretariat invites the opposing party or parties to reply within thirty days after delivery of the request. If a party refuses conciliation or does not reply within the time-limit, the attempted conciliation shall be considered as having failed.

### **Article 10**

When the parties accept recourse to conciliation the Presidium nominates one of its members or another qualified person to act as conciliator. This latter studies the file, convenes the parties to a hearing and submits proposals for the amicable settlement of the dispute.

### **Article 11**

1. If agreement is reached, this shall be the subject of a Record signed by the parties and the conciliator. At the request of all the parties, the Presidium may appoint the conciliator as sole arbitrator if a valid arbitration agreement exists. In this case, the agreement shall be given the form of an award by the latter.

2. If there is no agreement, the procedure is considered as having come to an end. The proposals, findings or declarations made in the course of the conciliation by the parties shall not bind them in a later arbitration procedure. Except under the conditions set forth in section (1), no person having acted as a conciliator can be appointed arbitrator for the same dispute.

### **Article 12**

The costs of the conciliation are fixed by the Secretariat at one quarter of the amount resulting from the schedule under Art. 29.

## **Arbitral Procedure**

### **Commencement of the Proceedings**

### **Article 13**

1. The proceedings are commenced by a request accompanied by the number of copies necessary for each party, the arbitrators and the Secretariat of the Arbitral Centre drawn up in German or in the language of the contract and sent to the Secretariat of the Arbitral Centre.

2. The request must include:

- particulars of the parties and their addresses
- evidence of the jurisdiction of the Arbitral Centre
- specific claims, and particulars or documents upon which the claims are based
- an evaluation of the sums in dispute at the time of the request, unless it is a question of claims relating to a liquidated sum of money
- particulars on the number of arbitrators in accordance with Art. 16. If a decision by three arbitrators is requested, the nomination of a person qualified to act as arbitrator in accordance with Art. 7(1), and the address of that person.

### **Article 14**

1. The Secretariat shall notify the request to the defendant, together with a copy of the Rules of Arbitration and the list of arbitrators inviting it to forward to it within thirty days a memorandum in reply, including where appropriate a counter-claim accompanied by the number of copies necessary in accordance with Art. 13 and to state the number of arbitrators in accordance with Art. 16. If a decision by three arbitrators is requested, a person qualified to act as arbitrator in accordance with Art. 7(1) shall be nominated and the address of that person shall be given.

2. The time-limit referred to in section (1) may be prolonged for legitimate reasons.

### **Article 15**

Notifications by the Arbitral Centre to the parties are considered as validly made if they are forwarded by registered letter to the addresses indicated by the parties or handed to them against a receipt.

### Appointment of Arbitrators

#### **Article 16**

The parties may agree to have their dispute decided either by a sole arbitrator or by a tribunal composed of three arbitrators. Where no agreement is reached on this subject and one of the parties does not nominate an arbitrator in accordance with Art. 13 or Art. 14, it is for the Presidium to say if the dispute should be decided upon by one or three arbitrators.

#### **Article 17**

If the dispute is submitted to a sole arbitrator the latter is appointed by the Presidium. The Chairmen of tribunals are chosen by the arbitrators nominated by the parties.

#### **Article 18**

If the parties do not exercise the right to nominate an arbitrator or if the arbitrators nominated by the parties do not agree within thirty days after delivery of the request by the Secretariat upon a Chairman, the appointment is made by the Presidium.

#### **Article 19**

1. When an arbitrator nominated by a party dies, or resigns from his functions, the party who nominated him is requested by the Secretariat to nominate another arbitrator within a period of thirty days after delivery of the request. If the party does not act in accordance with this request the appointment is made by the Presidium.
2. Where a Chairman of an arbitral tribunal has died or resigns from his functions, the two other arbitrators shall have a period of thirty days after being requested by the Secretariat in which to choose a new Chairman. Failing appointment within this period, the new Chairman shall be appointed by the Presidium.
3. The replacement of a sole arbitrator depends upon the Presidium.
4. The replacement of an arbitrator does not create any obstacle to the continuation of the procedure or to the making of an award.

### Challenge and Termination of the Mandate of Arbitrators

#### **Article 20**

1. The challenge of an arbitrator by a party must be communicated to the Secretariat immediately after the appearance of grounds of challenge.
2. An arbitrator may be challenged by the parties:

(a) In cases where he is himself a party, or in which he finds himself in respect of one of the parties in the position of a creditor or debtor or a person having an obligation against whom recourse may be exercised;

(b) in cases concerning his spouse or his relations or relations by marriage in direct line, or relations up to the fourth degree or by marriage up to the second degree in a collateral line;

(c) in cases concerning his adoptive parents or children or of his adopting parents or children taken into the family or his wards;

(d) in cases in which he has been or remains the attorney of one of the parties or in which he has given evidence as a witness or has been heard as an expert;

(e) if there is sufficient reason to place his impartiality in doubt.

3. The Presidium shall decide upon the challenge. This shall be rejected if the person asking for it has taken part in the procedure notwithstanding the knowledge which he had or ought to have had of the ground of challenge relied upon.

4. Either party may request the termination of the mandate of an arbitrator who does not fulfil his duty in accordance with these Rules of Arbitration or who delays the proceedings excessively. The procedure is as under section (1). The Presidium shall decide upon the request.

5. When an arbitrator is obviously unable to perform his functions, the Presidium may terminate his mandate at the request of a party or ex officio.

6. If the challenge or the request for termination of the mandate of an arbitrator is accepted, or if the Presidium terminates his mandate ex officio, the replacement takes place in accordance with the provisions of Art. 19.

## Proceedings

### **Article 21**

1. The proceedings may be oral or written. A hearing is fixed at the request of at least one of the parties or if the sole arbitrator or arbitral tribunal to whom the case has been referred considers it necessary.

2. The date of hearing is fixed by the Chairman of the arbitral tribunal or by the sole arbitrator. The hearings are not public.

3. Arbitrators may, if they consider it necessary, ask the parties to produce supplementary evidence or they may appoint an expert.

4. The result of the hearings shall be the subject of a Record which should be signed by the arbitrators and the parties. The refusal of one of the parties to sign the Record must be mentioned thereupon. Such refusal shall not be an obstacle to the pursuit of the proceedings.

## **Article 22**

The parties have the right to be represented by authorized agents in the proceedings before the arbitral tribunal.

## **Article 23**

Arbitrators must apply the law chosen by the parties. In the absence of such a choice the arbitrators shall decide upon the law applicable both to the substance and to the procedure.

## **Article 24**

1. Awards are drawn up in writing and all the copies necessary must be signed by the arbitrators. The signatures of the majority of the arbitrators shall suffice if there is a statement in the award that an arbitrator refuses to sign or if his signature cannot be obtained because of an obstacle which cannot be overcome within a reasonable period of time. If an arbitral tribunal makes an award by a majority, mention thereof must be made in the award at the request of the arbitrator who is in a minority.

2. The Chairman, or if he is prevented another arbitrator, must confirm on a copy at the request of a party the finality and enforceability of the award.

3. All the necessary copies of awards are confirmed by means of the signature of the Secretary and the stamp of the Arbitral Centre and served on to the parties.

## **Article 25**

1. The awards of the Arbitral Centre are final. They cannot be the subject of any means of recourse.

2. With the agreement of the parties, the Secretary may publish the legal contents of awards under a form which guarantees that the parties remain anonymous.

## **Article 26**

Either party may require that a settlement shall be given the form of an award in order to facilitate any enforcement which may prove necessary.

## **Costs of the Proceedings**

### **Settlement of Costs and Deposit**

## **Article 27**

The claimant respectively counter-claimant shall pay a registration fee of an amount of 1000 Schillings. This fee is intended to cover the costs up to the submission of the file to the arbitrators. If the costs are higher, a further sum may be required.

## Article 28

1. The costs of arbitration (administrative costs of the Arbitral Centre, arbitrators' and experts' fees, travelling and subsistence expenses of the arbitrators and the experts and other expenses) are fixed by the Secretary
2. The Secretary fixes the amount of the deposit which shall be paid by the parties in equal shares within thirty days after delivery of the request before the submission of the file to the arbitrators.
3. If a party fails to pay its share within this time-limit the Secretary shall give notice thereof to the party (parties) having paid its (their) share and shall invite it (them) to pay the deficit within thirty days after delivery of the request to pay or to inform him otherwise.
4. If there is no payment of the deposit within the time-limit stated in section (2) or if the party (parties) having paid its (their) share is (are) not willing to pay the deficit within the time-limit fixed in section (3), the principal claim respectively counter-claim shall be considered as having been withdrawn.
5. If the arbitrators consider it necessary to appoint an expert, they shall give notice thereof to the Secretary indicating the expected costs. The Secretary must proceed in accordance with section (2). The arbitrators may appoint an expert only after the expected fees and expenses of the expert have been deposited with the Secretariat.
6. The time-limits fixed in section (2) and (3) may be prolonged for legitimate reasons.
7. If in the course of the proceedings the amount fixed in accordance with section (2) should prove insufficient the Secretary may require a further sum.
8. If the proceedings shall come to an end by the withdrawal of the request, the Secretary may repay, at request, part of the deposit, taking into account the costs incurred up to the moment of the withdrawal of the request.

## Article 29

The administrative charges of the Arbitral Centre and the arbitrators' fees are fixed on the basis of the amount in dispute according to the following schedule

Administrative Charges (\*), (\*\*\*)

Value of claim in Schillings	
to 850,000	8,500
850,001 to 1,700,000	1 %
1,700,001 to 8,500,000	0.5 %
8,500,001 to 17,000,000	0.2 %

17,000,001 to 34,000,000	0.1 %
34,000,001 to 85,000,000	0.05 %
above 85,000,000	0.01 %

#### Arbitrators' Fees (\*\*), (\*\*\*)

Value of claim in Schillings	
to 850,000	6 %, min. 8,500
850,001 to 1,700,000	3 %
1,700,001 to 8,500,000	2 %
8,500,001 to 17,000,000	1 %
17,000,001 to 34,000,000	0.6 %
34,000,001 to 85,000,000	0.4 %
85,000,001 to 170,000,000	0.2 %
170,000,001 to 850,000,000	0.1 %
above 850,000,000	0.01%

#### References

(\*) The given rates only include the administrative charges of the Arbitral Centre and they do not include the expenses of the arbitrators, the fees and expenses of the experts, interpreter's costs and other expenses.

(\*\*\*) To calculate the administrative charges and the arbitrators' fees, the given scales are to be calculated separately and added together.

(\*\*) The given rates are the fees for a sole arbitrator. When a case is submitted to a tribunal, they can be increased up to three times.

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