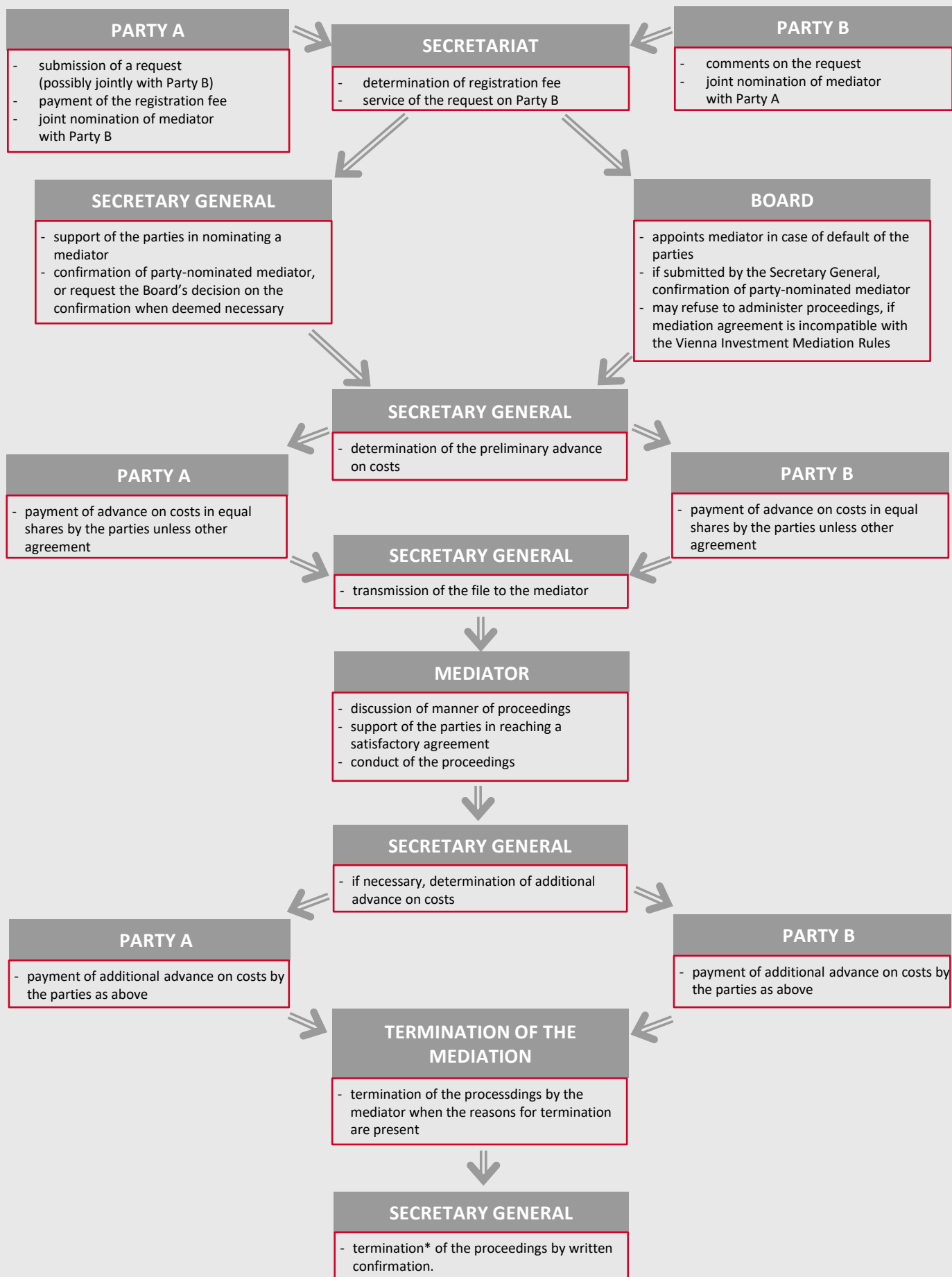


Mediation Proceedings under the Vienna Investment Mediation Rules 2021



* 13 Award on agreed terms possible in case of arb-med-arb proceedings

Mediation Proceedings under the Vienna Investment Mediation Rules 2021

1. Commencement of the Mediation Proceedings

- The proceedings shall be initiated by submitting a request (in hardcopy or electronic form) (Art 3 para 1) to the Secretariat. The request shall include the contact details of the parties, comments on their nationality, a short description of the facts and the dispute, the amount in dispute, the contact details of the mediator nominated and particulars or proposals regarding an agreement of the parties to submit their dispute for resolution under the Vienna Mediation Rules (Art 3 para 2, Art 1 para 5).
- The request shall be submitted in electronic form and in hard copy form in the number of copies necessary so that each party receives a copy (Art 1 para 5, Art 12 para 1 Vienna Rules).
- The registration fee shall be paid within the time limit set, otherwise the Secretary General may declare the proceedings terminated (Art 4 para 5). If arbitral proceedings under the Vienna Rules are commenced before, during or after proceedings under the Vienna Mediation Rules between the same parties and concerning the same subject matter, no further registration fee will be charged in the subsequently commenced proceedings (Art 4 para 4).

2. Information of the Parties by the Secretary General

- The Secretary General informs the parties of the receipt of the request, serves the request on the other party and invites comments within a set time limit, to the extent that the request was not submitted jointly by all parties (Art 3 para 3).

3. Comments by the Other Party

- The other party has the opportunity to comment the request within the time limit set by the Secretary General to the extent that the request was not submitted jointly by all parties (Art 3 para 3).

4. Appointment of the Mediator

- The parties can jointly nominate a mediator and indicate the contact details within the time limit set by the Secretary General (Art 7 para 1).
- The Secretariat may assist the parties in the joint nomination of the mediator in particular by proposing one or more person from which the parties may jointly nominate a mediator (Art 7 para 2).
- If the parties fail to jointly nominate a mediator, the Board shall appoint the mediator (Art 7 para 2).
- The appointed mediator may suggest co-mediation and a co-mediator to the parties for whom the same appointment process will apply.
- Prior to the appointment of the mediator by the Board or the confirmation of the nominated mediator, the mediator shall sign and submit to the Secretary General a declaration confirming his/her impartiality and independence, availability, qualification, acceptance of office and submission to the Vienna Mediation Rules (Art 7 para 3). The Secretary General forwards a copy of these statements to the parties for comments (Art 7 para 3).
- If there are no doubts as to the impartiality and independence of the mediator and his ability to duly carry out his mandate, the Board shall appoint the mediator, or the Secretary General shall confirm the nominated mediator (Art 7 para 4).

5. Advance on Costs and Payment of the Advance on Costs

- The Secretary General shall determine a preliminary advance on costs for the prospective administrative fees of VIAC, the down payment on the mediator's fees and the anticipated expenses (Art 8 para 1).
- Unless the parties have agreed otherwise in writing, the advance on costs shall be borne by the parties in equal shares, and in case of multiparty mediation the advance on costs are shared pro-rata (Art 8 para 2).
- If the advance on costs allocated to one party is not received or not received in full within the time limit specified, the Secretary General informs the other party and the other party is at liberty to bear the outstanding share of the advance on costs (Art 8 para 2).
- If the advance on costs is not paid within the time limit specified, the mediator may suspend the proceedings in whole or in part, or the Secretary General may declare the proceedings terminated (Art 8 para 2).

6. Transmission of the File

- The Secretary General shall transmit the file to the mediator (Art 9 para 1) if
 - a) a request in accordance with Art 3 has been submitted; and
 - b) the mediator has been appointed; and
 - c) the preliminary advance on costs has been paid in full.

7. Determination and Payment of additional advance on costs

- The Secretary General may determine an additional necessary advance on costs, in particular to cover the mediator's fees and anticipated expenses (Art 8 para 3).
- Unless the parties have agreed otherwise in writing, the additional advance on costs shall be borne by the parties in equal shares (Art 8 para 2 and 3).
- If the advance on costs is not paid within the time limit specified, the mediator may suspend the proceedings in whole or in part, or the Secretary General may declare the proceedings terminated (Art 8 para 2).

8. Duties of the Mediator

- The mediator shall promptly discuss with the parties the manner in which the proceedings shall be conducted (Art 9 para 2).
- The mediator shall assist the parties in finding an acceptable and satisfactory solution for their dispute (Art 9 para 2).
- In conducting the proceedings, the mediator shall be in control of the process while letting himself be guided by the wishes of the parties insofar as they are in agreement and in line with the purpose of the proceedings (Art 9 para 2).
- The proceedings may be conducted in person or by other means. Having due regard to the circumstances of the case and after consultation with the parties, the mediator may decide to utilize any technological means to conduct proceedings remotely (Art 9 para 3).
- Sessions with the mediator are not public (Art 9 para 6).
- The mediator may meet with a party in the absence of the other party (caucus); the mediator shall keep confidential the information by one party in the absence of the other party, unless the party giving the information expressly waives such confidentiality (Art 9 para 7).

9. Parallel Proceedings

- A party may commence or continue any legal, arbitral or other proceedings in respect of the same dispute, irrespective of whether proceedings are being conducted under the Vienna Mediation Rules (Art 10).

11. Termination of the Mediation Proceedings

- The mediator shall terminate the mediation by way of a written confirmation by the Secretary General to the parties (Art 11 para 1.1-1.4):
 - a) if there is an agreement of the parties to settle the entire dispute and/or the proceedings are concluded;
 - b) upon notification in writing by any party to the mediator that the party does not wish to continue the proceedings;
 - c) if the mediator is of the opinion that the proceedings will not resolve the dispute between the parties.
- The Secretary General terminates the mediation by way of a written notification to the parties (Art 11 para 1.5):
 - a) upon occurrence of the circumstances described in para 1.1-1.4 (the mediator shall immediately inform the Secretary General of the circumstances for the termination); or
 - b) upon failure to appoint a mediator; or
 - c) upon failure to comply with a payment order in a timely manner.

13. Award on Agreed Terms

- If, prior to the commencement of mediation, arbitration proceedings were initiated in accordance with the Vienna Rules and interrupted for the duration of the mediation, the parties may request the continuation of the arbitration proceedings and the issue of an arbitral award on agreed terms (Art 37 para 1 Vienna Rules).