

(4) Throughout the Proceedings, the parties shall act in good faith, fairly and respectfully. Each party takes on the obligation to participate in at least one session with the mediator, unless the Proceedings are terminated prematurely in accordance with Article 11 para 1 subpara 1.5.

(5) Sessions with the mediator are not public. Only the following individuals shall be allowed to attend:

- the mediator;
- the parties; and
- persons whose attendance was announced to the mediator and the other party in a timely manner before the respective session and who have signed a written confidentiality agreement in accordance with Article 12.

(6) If he considers it appropriate, the mediator may meet with a party in the absence of the other party (*caucus*). The mediator shall keep confidential the information given by one party in the absence of the other party, unless the party giving the information expressly waives such confidentiality vis-à-vis the other party and the mediator agrees to pass on such information.

## PARALLEL PROCEEDINGS

### Article 10

A party may commence or continue any judicial, arbitral or other proceedings in respect of the same dispute, irrespective of whether parallel Proceedings are being conducted under the Vienna Mediation Rules.

## TERMINATION OF THE PROCEEDINGS

### Article 11

(1) The Proceedings shall be terminated by way of a written confirmation of the Secretary General to the parties and upon occurrence of the earliest of the following circumstances:

- 1.1 an agreement of the parties for the settlement of the entire dispute;
- 1.2 the notification in writing by any party to the mediator or the Secretary General that it does not wish to continue the Proceedings, provided that at least one session with the mediator has taken place, or that no such session has taken place within two months of the mediator's appointment, or that the time frame agreed for the Proceedings has expired.
- 1.3 the notification in writing by the mediator to the parties that the Proceedings will, in his opinion, not resolve the dispute between them;
- 1.4 the notification in writing by the mediator to the parties that the Proceedings are terminated;
- 1.5 the notification in writing by the Secretary General regarding the failure
  - i. to appoint a mediator in accordance with Article 7 paras 1 to 4;
  - ii. to comply with a payment order in a timely manner.

(2) The Proceedings may also be terminated in part if one of the grounds for termination listed under para 1 applies only to a part of the dispute.

(3) In the cases listed under para 1, subparas 1.2 to 1.4 and para 2, the mediator shall immediately inform the Secretary General of the circumstance of the termination.

## CONFIDENTIALITY, ADMISSIBILITY OF EVIDENCE AND SUBSEQUENT PARTY REPRESENTATION

### Article 12

(1) The individuals listed under Article 9 para 5 shall treat confidential anything that has come to their attention in connection with the Proceedings and that would not have come to their attention had the Proceedings not taken place.

(2) Any written documents that were obtained during the Proceedings and would otherwise not have been obtained shall not be used in subsequent judicial, arbitral or other proceedings. Any statements, views, proposals and admissions made during the Proceedings as well as one party's willingness to settle the dispute amicably, shall also remain confidential. Regarding all of the above, the mediator shall not be called as a witness.

(3) The obligations under paras 1 and 2 shall not apply if the law governing these proceedings contains a mandatory provision to the contrary or if it is required for the implementation or the enforcement of an agreement terminating these proceedings.

(4) The fact that the Proceedings are taking place, have taken place or will take place shall not be confidential.

(5) The mediator shall not act as attorney or represent the parties in any other capacity or otherwise advise the parties in judicial, arbitral or other proceedings regarding the dispute that constitutes or constituted the subject matter of the Proceedings.

## DISCLAIMER

### Article 13

The liability of the mediator, the Secretary General, the Deputy Secretary General, the Board and its members, and the Austrian Federal Economic Chamber and its employees for any act or omission in relation to Proceedings under the Vienna Mediation Rules is excluded to the extent legally permissible.

## TRANSITIONAL PROVISIONS

### Article 14

(1) The Vienna Mediation Rules, which entered into force on 1 January 2016, shall apply to all Proceedings in which the request was filed after 31 December 2015.

(2) Where the parties have submitted their dispute to the Conciliation Rules prior to the entry into force of the Mediation Rules, the Vienna Mediation Rules shall apply unless one of the parties puts forward a written objection. In such case the Conciliation Rules shall apply.

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**RULES OF  
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**ANNEX 5** | in force as from 1 January 2016

## INTRODUCTORY PROVISIONS

### Article 1

(1) The VIAC Rules of Mediation (hereinafter "Vienna Mediation Rules") shall apply in the version applicable at the time of the commencement of the Proceedings if the parties, before or after the dispute has arisen, agree to submit their dispute to the Vienna Mediation Rules.

(2) The Vienna Mediation Rules may be amended by a written agreement of all parties. Following the appointment of the mediator, every amendment is also subject to the mediator's consent.

(3) The Board may refuse to administer Proceedings under the Vienna Mediation Rules if any agreed amendments are incompatible with the Vienna Mediation Rules.

## DEFINITIONS

### Article 2

(1) In the Vienna Mediation Rules

**1.1 Proceedings** refers to a mediation, any other alternative dispute resolution method chosen by the parties, or a combination of dispute resolution methods that are supported by a mediator and conducted under the Vienna Mediation Rules;

**1.2 Mediator** refers to one or more neutral third persons who support the parties in the resolution of their dispute;

**1.3 Party** refers to one or more **parties** who agree or have agreed to submit their dispute to the Vienna Mediation Rules.

(2) To the extent the terms used in the Vienna Mediation Rules refer to natural persons, the form chosen shall apply to both genders.

## COMMENCING THE PROCEEDINGS

### Article 3

(1) Any party wishing to commence Proceedings under the Vienna Mediation Rules shall submit a written request to the Secretariat. The Proceedings shall be deemed to commence on the date on which the request is received by the Secretariat in the event of an agreement of the parties to submit their dispute to the Vienna Mediation Rules. Absent such an agreement, the Proceedings shall be deemed to commence on the date on which such agreement was subsequently concluded by the parties.

(2) A copy of the request including exhibits shall be submitted for each party who did not submit the request, each mediator, and the Secretariat.

(3) The request shall include the following:

3.1 the full names, addresses and other contact details of the parties;

3.2 a short description of the facts and the dispute;

3.3 the amount in dispute;

3.4 the full name, address and other contact details of the mediator nominated, or attributes that a mediator to be appointed should possess;

3.5 particulars or proposals regarding an agreement of the parties to submit their dispute under the Vienna Mediation Rules, in particular as regards

- i. the number of mediators;
- ii. the language(s) to be used in the Proceedings.

(4) The Secretary General shall confirm receipt of the request and serve the request on the other party and invite comments within a set time limit provided that the request was not submitted jointly by all parties.

## REGISTRATION FEE

### Article 4

(1) If an agreement between the parties to submit their dispute to the Vienna Mediation Rules already exists, the registration fee shall be paid net of any charges in the amount stipulated in Annex 3 to the Vienna Rules upon submission of the request. If no such agreement exists, the registration fee shall be paid only upon subsequent conclusion of such agreement.

(2) The registration fee is non-refundable. The registration fee shall not be deducted from the paying party's advance on costs.

(3) If arbitral proceedings under the Vienna Rules are commenced immediately before, during, or after commencement of 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 later commenced proceedings.

(4) The Secretary General may extend the time limit for the payment of the registration fee as appropriate. If payment is not effected within the time limit set, the Secretary General may declare the Proceedings terminated.

## PLACE OF THE MEETINGS AND SESSIONS

### Article 5

Irrespective of any preceding or parallel arbitral proceedings, the mediator shall, in consultation with the parties and after giving due consideration to all the circumstances, determine the place of the mediation meeting(s) or session(s). The mediator may determine a different place for each meeting or session, if he deems that to be appropriate.

## LANGUAGE OF THE PROCEEDINGS

### Article 6

Immediately after transmission of the file (Article 9 para 1), the mediator, after consultation with the parties and giving due consideration to all the circumstances, shall determine the language(s) of the Proceedings.

## APPOINTMENT OF THE MEDIATOR

### Article 7

(1) Absent an agreement of the parties regarding the identity of the mediator or his mode of appointment, the Secretary General shall invite the parties to jointly nominate a mediator and indicate his name, address and contact details within a set time limit.

(2) The Secretariat may assist the parties in the joint nomination of the mediator in particular by proposing one or more mediators from which the parties may jointly nominate one or more mediators. If the parties fail to jointly nominate a mediator, the Board shall appoint the mediator. In doing so, the Board shall give due consideration to the parties' preferences as to the mediator's attributes.

(3) 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 (i) impartiality and independence, (ii) availability, (iii) acceptance of office, and (iv) submission to the Vienna Mediation Rules. The mediator shall disclose in writing all circumstances that could give rise to doubts as to his impartiality or independence or that conflict with the agreement of the parties. This duty of the mediator continues to apply throughout the Proceedings. The Secretary General shall forward a copy of these statements to the parties for comments.

(4) 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. If deemed necessary by the Secretary General, the Board shall decide whether to confirm a nominated mediator. Upon confirmation the nominated mediator shall be deemed appointed.

(5) If the confirmation of a mediator is rejected or if the exchange of a mediator becomes necessary, paras 1 to 4 shall apply *mutatis mutandis*.

## ADVANCE ON COSTS AND COSTS

### Article 8

(1) The Secretary General shall determine the first part of the advance on costs for the prospective administrative fees of VIAC, the down payment on the mediator's fees (plus any value-added tax) and the anticipated expenses (such as travel and subsistence costs of the mediator, delivery charges, rent etc). This first part shall be paid by the parties prior to the transmission of the file to the mediator within a time limit set by the Secretary General.

(2) Upon transmission of the file, the mediator shall provide an estimate of the prospective duration of the Proceedings as well as his expenses. Thereupon, the Secretary General shall determine the second part of the advance on costs as necessary, which shall be paid by the parties prior to the first session with the mediator.

(3) Once it becomes foreseeable that the Proceedings will not be completed within the estimated time period, the mediator shall immediately inform the Secretary General, who shall then set a further advance on costs in the required amount.

(4) Unless the parties have agreed otherwise in writing, the advances on cost shall be borne by the parties in equal shares. 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 shall inform the other party. The other party is free to bear the outstanding share of the advance on costs. If this share is not paid within the time limit specified, the Secretary General may suspend the Proceedings or declare the Proceedings terminated.

(5) Upon termination of the Proceedings, the Secretary General shall calculate the administrative and the mediator's fees and fix these fees together with the expenses.

(6) The administrative fees shall be calculated on the basis of the schedule of fees (Annex 3 to the Vienna Rules) according to the amount in dispute. The administrative fees shall be half of the amount set for arbitration proceedings. In fixing the amount in dispute, the Secretary General may deviate from the parties' determination if the latter was clearly undervalued or if no value was assigned.

(7) The expenses shall be determined according to the actual expenditure.

(8) The amount of the mediator's fees shall be calculated according to the actual time spent on the basis of hourly or daily fee rates. The fee rates shall be fixed by the Secretary General at the time of the mediator's appointment or confirmation following consultation with the mediator and the parties. The Secretary General shall consider the proportionality of the fees and take into account the complexity of the dispute. There shall be no separate fee arrangements between the parties and the mediator.

(9) Unless otherwise agreed in writing, the parties shall bear their own costs, including the costs of legal representation.

(10) If arbitral proceedings under the Vienna Rules are commenced immediately before, during, or after commencement of Proceedings under the Vienna Mediation Rules between the same parties and concerning the same subject matter, the administrative fees of the preceding proceedings shall be deducted from the administrative fees in the later commenced proceedings.

(11) If arbitral proceedings under the Vienna Rules are commenced following termination of Proceedings under the Vienna Mediation Rules between the same parties and concerning the same subject matter, the Secretary General shall apply Article 44 para 10 Vienna Rules for the calculation of the arbitrators' fees correspondingly.

## CONDUCT OF THE PROCEEDINGS

### Article 9

(1) The Secretary General shall transmit the file to the mediator if

- a request in accordance with Article 3 has been submitted;
- the mediator has been appointed; and
- the first part of the advance on costs in accordance with Article 8 para 1 has been paid in full.

(2) The mediator shall promptly discuss with the parties the manner in which the Proceedings shall be conducted. He shall assist the parties in finding an acceptable and satisfactory solution for their dispute. In conducting the Proceedings, the mediator shall be in control of the Proceedings but will let himself be guided by the wishes of the parties insofar as they are in agreement and consistent with the purpose of the Proceedings.

(3) The Proceedings may be conducted in person or through virtual means. The parties are free to select their mediation team in conjunction with guidance from the mediator. Each party shall be represented in a meeting or session with the mediator by a duly appointed and authorized person including the authorization to settle.