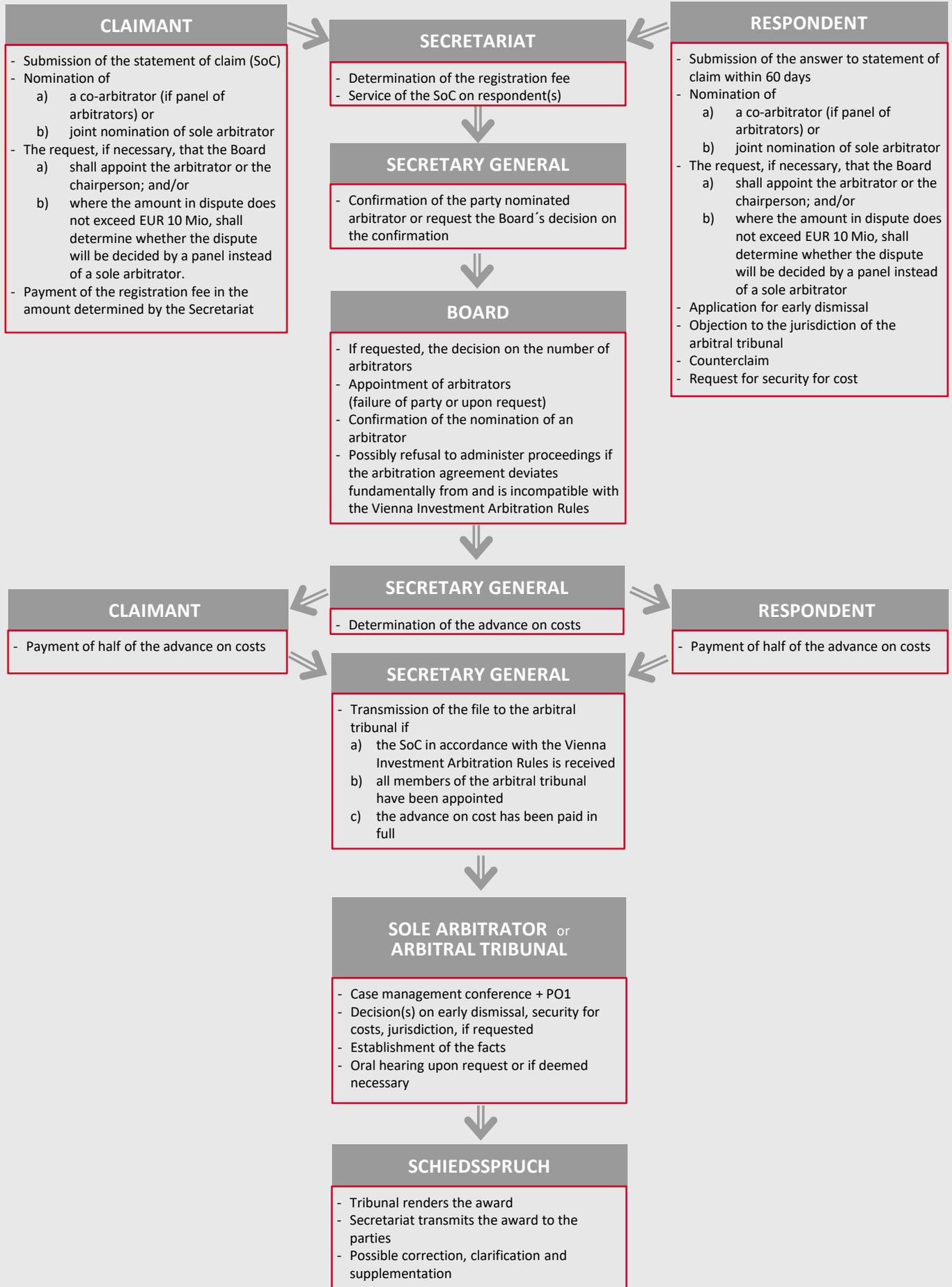


Arbitral Proceedings under the Vienna Investment Arbitration Rules 2021



1. Commencement of the Arbitration Proceedings

- The arbitral proceedings shall be initiated by the submission of a statement of claim (in hardcopy or in electronic form) to the Secretariat (Art 7 para 1). The statement of claim shall include contact details of the parties; comments on their nationality; a statement of the facts; a specific request for relief; the monetary value of each individual claim; particulars regarding the number of arbitrators or, if necessary, the request that the number be determined by the Board (where the amount in dispute does not exceed EUR 10 Mio, the Board may determine that the dispute shall be decided by a panel instead of a sole arbitrator); the nomination of a co-arbitrator, or, if necessary, the request that the arbitrator or the chairperson be appointed by the Board; particulars regarding the arbitration agreement and its content, including a reference to the instrument(s) in which the parties' arbitration agreement is recorded and a statement how the parties are bound by the arbitration agreement (Art 7 para 2).
- The statement of claim shall be submitted either electronically or in hard copy in the number of copies necessary to provide each party with a copy (Art 12 para 1).
- The registration fee shall be determined by Secretariat and has to be paid by the claimant within the time period set; otherwise, the Secretary General may declare the proceeding terminated (Art 10 para 4).

2. Request to Remedy Defects

- The Secretariat informs the parties of the receipt of the statement of claim (Art 7 para 1).
- If the statement of claim does not comply with the Vienna Investment Arbitration Rules or copies are missing, the Secretary General may request that the claimant remedy the defect. If the claimant does not comply with the order to remedy the defects, the Secretary General may declare the proceedings terminated (Art 7 para 3, Art 34 para 3.1). The Secretary General may also defer transmission of the statement of claim to the respondent until the claimant has complied with a request to submit copies pursuant to Article 12 para 1 (Art 7 para 4). Otherwise, the Secretary General shall transmit the statement of claim to the respondent.

3. Answer to the Statement of Claim

- The respondent shall submit its answer to the statement of claim within a period of 60 days (Art 8 para 1, Art 12 para 1). The answer to the statement of claim shall include the contact details of the respondent, comments on the nationality, comments in response to any statements contained in the statement of claim under Art 7 para 2.7 or with respect to the matters covered therein, comments on the request for relief and the facts, the respondent's request for relief, particulars regarding the number of arbitrators, or, if necessary, the request that the number be determined by the Board (where the amount in dispute does not exceed EUR 10 Mio, the Board may determine that the dispute shall be decided by a panel instead of a sole arbitrator); the nomination of a co-arbitrator, or, if necessary, the request that the arbitrator or chairperson be appointed by the Board (Art 8 para 2).
- The respondent may raise counterclaims in the answer to the statement of claim (or later in the course of proceedings) (Art 9 para 1). The requirements for the counterclaim are the same as for a claim (Art 9 para 2, Art 7, Art 10). The arbitral tribunal shall give the claimant the opportunity to submit an answer to the admitted counterclaims (Art 9 para 4); otherwise, the counterclaim shall be returned to the Secretariat to be addressed in separate proceedings (Art 9 para 3).
- The respondent may request that the claimant shall provide security for costs (Art 33 para 6).

4. Early Dismissal of Claims, Counterclaims and Defenses; Objection to Jurisdiction; Security for Costs

- An application for early dismissal, in which the party shall state in detail the facts and legal basis supporting its application, shall be filed no later than 45 days after the constitution of the arbitral tribunal or the submission of the answer to the statement of claim, whichever is earlier (Art 24a para 2).
- A plea that the arbitral tribunal does not have the jurisdiction shall be raised no later than the first pleading on the merits after the constitution of the arbitral tribunal (Art 24 para 1). A party is not to be precluded from raising such an objection by the fact it has nominated an arbitrator or has participated in the nomination of an arbitrator (Art 24 para 1).
- The arbitral tribunal may order any party asserting a claim or counterclaim to provide security for costs, if the requesting party shows cause that the recoverability of a potential claim for costs is, with a sufficient degree of probability, at risk. (Art 33 para 6).

5. Confirmation of Nominated Arbitrators; Disclosure of Third-Party Funding

- A party shall disclose the existence of any TPF and the identity of the third-party funder in its statement of claim or its answer to the statement of claim or immediately upon concluding a TPF arrangement; the Secretary General shall inform the arbitrators of such disclosure for purposes of completing the arbitrator declaration (Art 13a).
- The Secretary General shall obtain a written declaration of a nominated arbitrator concerning his impartiality, independence, availability, qualification, acceptance of office, and submission to the Vienna Investment Arbitration Rules (Art 19 para 1, Art 16 para 3) and forward a copy of the declaration of a nominated arbitrator to the parties (Art 19 para 1).
- The Secretary General confirms the nominated arbitrator if no doubts exist as to the impartiality and independence of the arbitrator and his ability to carry out his mandate (Art 19 para 1). If deemed necessary by the Secretary General, the Board shall decide on the confirmation of a nominated arbitrator (Art 19 para 2).

6. Duties of the Board

- Absent an agreement on the number of arbitrators, and where the amount in dispute does not exceed EUR 10 million, the Board may determine that the dispute shall be decided by a panel of three arbitrators; otherwise, the dispute will be decided by a sole arbitrator (Art 17 para 2).
- If a party fails to nominate an arbitrator or requests that an arbitrator be appointed by the Board, the Board appoints the arbitrator (Art 17 para 4, Art 7 para 2.6, Art 8 para 2.6).
- The Board shall confirm a nominated arbitrator (Art 19 para 1).
- The Board may refuse to administer the proceedings if the arbitration agreement deviates fundamentally from and is incompatible with the Vienna Investment Arbitration Rules (Art 2).

7. Determination of Advance on Costs

- The Secretary General shall determine the VIAC's prospective administrative fees, the arbitrator's fees, and the expenses separately for claims and counterclaims (Art 42 para 1).

8. Payment of Advance on Costs by the Parties

- The advance on costs shall be paid in equal shares by the parties prior to the transmission of the file to the arbitral tribunal within 30 days of service of the request for payment (Art 42 para 4).
- In multi-party proceedings, one half of the advance on costs shall be paid jointly by the claimants and one half by the respondents (Art 42 para 4).
- If the advance on costs allocated to one party is not received (in full) within the time limit specified, the opposing party is requested to pay the outstanding amount. If the opposing party pays the respective share, the arbitral tribunal may order the non-paying party to reimburse the paying party at the beginning of the proceedings (Art 42 para 9).
- If the parties fail to fulfill the payment obligations, the arbitral tribunal may suspend the proceedings in whole or in part, or the Secretary General may declare the proceedings terminated (Art 42 para 11, Art 34 para 3.1).

9. Transmission of the File

- The Secretary General transmits the file to the arbitral tribunal (Art 11) if:
 - a) the Secretariat has received a statement of claim in accordance with the Vienna Investment Arbitration Rules; and
 - b) all members of the arbitral tribunal have been appointed; and
 - c) the advance on costs has been paid in full.

10. The Proceedings before the Arbitral Tribunal

- At the beginning of the proceedings, the arbitral tribunal will generally conduct a case management conference with the parties and issue a procedural order (PO1) with the further procedural timetable.
- The parties are free to agree on the place of arbitration (Art 25 para 1). Absent a party agreement, the place of arbitration shall be determined by the arbitral tribunal (Art 25 para 1). The arbitral tribunal may deliberate or take procedural actions at any location it deems appropriate (Art 25 para 2).
- Absent a party agreement, the arbitral tribunal shall decide on the language(s) of the arbitration (Art 26).
- The arbitral tribunal shall conduct the arbitration in accordance with the Vienna Investment Arbitration Rules and the agreement of the parties in an efficient and cost-effective manner, but otherwise according to its own discretion (Art 28 para 1).
- If the arbitral tribunal considers it necessary, it may, on its own initiative, collect evidence, question witness and parties, request the parties to submit evidence, and call experts (Art 29 para 1).
- The arbitral tribunal may also, if it deems it necessary, order the disclosure of specific details of the third-party funding arrangement and/or the third-party funder's interest in the outcome of the proceedings, and/or whether or not the third-party funder has committed to undertake adverse costs liability (Art 13a para 3).
- The arbitration can be conducted orally or in writing (Art 30 para 1). An oral hearing is held upon request of a party or upon a decision of the arbitral tribunal in person or by other means (Art 30 para 1). The date of the oral hearing shall be fixed by the chairperson or the sole arbitrator, and the hearing shall not be open to the public (Art 30 para 2). The chairperson or the sole arbitrator shall prepare and sign minutes of the hearing, which shall contain at the minimum a summary of the hearing and its results (Art 30 para 2).
- As soon as the arbitral tribunal is convinced that the parties have had sufficient opportunity to make submissions and offer evidence, the arbitral tribunal shall declare the proceedings closed (Art 32 para 1).

11. Award

- The award shall be rendered no later than 6 months after the last hearing concerning matters to be decided in the award or the filing of the last submission concerning such matters (Art 32 para 2).
- Before issuing the award, the arbitral tribunal shall send a draft to the Secretariat for review. The Secretary General shall determine the costs of the proceedings in accordance with Art 44 para 1.1, which shall then be included in the cost decision of the award by the arbitral tribunal (Art 38 para 1).
- Awards shall be in writing and state the reasons on which they are based unless the parties have agreed that the award may exclude the reasons (Art 36 para 1). Further, the award shall identify the date on which it was issued and the place of arbitration (Art 36 para 2, Art 25) as well as the signature of all arbitrators (Art 36 para 3). The signature of the majority of the arbitrators shall suffice if the award states that one of the arbitrators refused to sign or was prevented from signing by an impediment that could not be overcome within a reasonable period of time (Art 36 para 3). The award is also signed by the Secretary General and bears the VIAC-stamp (Art 36 para 4).
- Upon request of the parties, the arbitral tribunal may render an award on agreed terms reflecting the content of the settlement reached (Art 37 para 1) or record the settlement reached by the parties (Art 37 para 2).
- The Secretary General shall transmit the award to the parties in hardcopy form. If it is not possible or feasible to send the award in hardcopy form within a reasonable time, or if the parties so agree, the Secretariat may send a copy of the award in electronic form (Art 36 para 5).
- Upon request of a party, the sole arbitrator or the chairperson (or Secretary General) shall confirm that the award is final and binding on all original copies (Art 36 para 6).
- Within 30 days of receipt of the award, any party may file applications for corrections, clarifications or to render an additional award on claims made in the arbitration but not resolved in the award with the Secretariat (Art 39 para 1). Upon its own initiative, the arbitral tribunal may issue corrections or supplementations within 30 days of the date of the award (Art 39 para 3).