

VERLAUTBARUNGSBLATT DER WIRTSCHAFTSKAMMER ÖSTERREICH

Jahrgang 2022

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5. Stück

5. Satzung: VIAC RULES OF INVESTMENT ARBITRATION AND MEDIATION 2021

5. Beschluss des Erweiterten Präsidiums der Wirtschaftskammer Österreich vom 2.6.2021 mit dem die VIAC RULES OF INVESTMENT ARBITRATION AND MEDIATION 2021 erlassen werden

Das Erweiterte Präsidium hat beschlossen:

VIAC RULES OF INVESTMENT ARBITRATION AND MEDIATION 2021

INTRODUCTION

With the adoption of the VIAC Rules of Investment Arbitration (“Vienna Investment Arbitration Rules”), the Vienna International Arbitral Centre offers a set of specialized arbitral rules to accommodate the unique features of investment arbitration, including the involvement of sovereign parties and the implication of issues of public interest and public policy.

The Vienna Investment Arbitration Rules are intended to apply by agreement to the arbitration of investment disputes arising under a contract, treaty, statute or other instrument and involving a State, a State-controlled entity or an intergovernmental organization.

Where the parties to a dispute have previously consented or a party has previously offered to consent to arbitration in accordance with rules of arbitration other than the Vienna Investment Arbitration Rules, a dispute may be submitted instead to arbitration in accordance with the Vienna Investment Arbitration Rules if the parties subsequently expressed their agreement to submit their dispute to arbitration in accordance with the Vienna Investment Arbitration Rules.

The VIAC Rules of Investment Mediation (“Vienna Investment Mediation Rules”) complement the Vienna Investment Arbitration Rules, and may be used either independently of, or in conjunction with, arbitration proceedings.

PART I

VIAC RULES OF INVESTMENT ARBITRATION (“VIENNA INVESTMENT ARBITRATION RULES”)

GENERAL PROVISIONS

SCOPE OF APPLICATION OF THE VIAC RULES OF INVESTMENT ARBITRATION

Article 1

(1) An agreement to submit a dispute to arbitration in accordance with the VIAC Rules of Investment Arbitration (hereinafter "Vienna Investment Arbitration Rules") may be expressed in a contract, treaty, statute or other instrument, or through an offer by a party in a contract, treaty, statute or other instrument which is subsequently accepted by the other party by any means, including by the other party's commencement of arbitration.

(2) Where the parties have agreed to submit their dispute to arbitration in accordance with the Vienna Investment Arbitration Rules, the parties shall be deemed to have agreed that the arbitration shall be administered by VIAC.

REFUSAL TO ADMINISTER PROCEEDINGS UNDER THE VIENNA INVESTMENT ARBITRATION RULES

Article 2

The Board may refuse to administer proceedings if the arbitration agreement deviates fundamentally from and is incompatible with the Vienna Investment Arbitration Rules.

APPLICABLE VERSION OF THE VIENNA INVESTMENT ARBITRATION RULES

Article 3

Unless the parties have agreed otherwise, the Vienna Investment Arbitration Rules shall apply in the version in effect at the time of the commencement of the arbitration (Article 7 paragraph 1) if the parties, before or after the dispute has arisen, have agreed to submit their dispute to the Vienna Investment Arbitration Rules.

WAIVER OF IMMUNITY

Article 4

By agreeing to submit a dispute to arbitration pursuant to the Vienna Investment Arbitration Rules, a party shall be deemed to have waived any right of immunity from jurisdiction in respect of proceedings relating to the arbitration to which such party might otherwise be entitled. A waiver of immunity relating to the enforcement of an arbitral award must be expressed separately.

LANGUAGES OF CORRESPONDENCE

Article 5

The correspondence of the parties with the Board and Secretariat shall be in English or German.

DEFINITIONS

Article 6

(1) In the Vienna Investment Arbitration Rules

1.1 **party** or **parties** refer to one or more claimants, respondents or one or more third parties joined to the arbitration in a statement of claim;

1.2 **claimant** refers to one or more claimants;

1.3 **respondent** refers to one or more respondents;

1.4 **third party** refers to one or more third parties who are neither a claimant nor respondent in the pending arbitration and whose joinder to this arbitration has been requested pursuant to Article 14;

1.5 **non-disputing party** refers to one or more third parties who are neither a claimant nor respondent in the pending arbitration and who have requested or been invited to make written submissions pursuant to Article 14a;

1.6 **non-disputing treaty party** refers to one or more contracting parties to a treaty pursuant to which the dispute has been submitted to arbitration who are neither a claimant nor respondent in the pending arbitration and who make or have been invited to make written submissions pursuant to Article 14a;

1.7 **arbitral tribunal** refers to a sole arbitrator or a panel of three arbitrators;

1.8 **arbitrator** refers to one or more arbitrators;

1.9 **co-arbitrator** refers to any member of a panel of arbitrators except its chairperson;

1.10 **award** refers to any final, partial or interim award;

1.11 **third-party funding** refers to any agreement entered into with a natural or legal person who is not a party to the proceedings or a party representative (Article 13), to fund or provide any other material support to a party, directly or indirectly financing

part or all of the costs of the proceedings either through a donation or a grant, or in exchange for remuneration or reimbursement that is wholly or partially dependent upon the outcome of the proceedings or in return for any premium payment;

1.12 **VIAC** refers to the Permanent International Arbitration Institution of the Austrian Federal Economic Chamber (Vienna International Arbitral Centre);

1.13 **Board, Secretary General** and **Secretariat** shall have the meaning and functions set forth in Articles 2 and 4 of the VIAC Rules of Arbitration ("Vienna Rules").

(2) To the extent the terms used in the Vienna Investment Arbitration Rules refer to natural persons, the form chosen shall apply to all genders. In practice, the terms in these rules shall be used in a gender-specific manner.

(3) References to "Articles" without further specification relate to the relevant articles of the Vienna Investment Arbitration Rules.

COMMENCEMENT OF THE ARBITRATION

STATEMENT OF CLAIM

Article 7

(1) The arbitral proceedings shall be initiated by submitting a statement of claim. The proceedings shall commence on the date of receipt of the statement of claim by the Secretariat in hardcopy form or in electronic form (Article 12 paragraph 1); hereby, the proceedings become pending. The Secretariat informs the other parties of the receipt of the statement of claim.

(2) The statement of claim shall contain the following information:

2.1 the full names, addresses, including electronic mail addresses, and other contact details of the parties;

2.2 the nationalities of the parties;

2.3 a statement of the facts and a specific request for relief;

2.4 the monetary value of each individual claim at the time of submission of the statement of claim if the relief requested is not exclusively for a specific sum of money;

2.5 particulars regarding the number of arbitrators in accordance with Article 17;

2.6 the nomination of an arbitrator if the dispute shall be decided by a panel of three arbitrators, or a request that the arbitrator or the chairperson be appointed by the Board; and

2.7 particulars regarding the arbitration agreement and its content, including a reference to the instrument(s) in which each party's agreement to submit the dispute to arbitration under the Vienna Investment Arbitration Rules is recorded and a statement how the parties are bound by the arbitration agreement.

(3) If the statement of claim does not comply with paragraph 2 of this Article, the Secretary General may request that the claimant remedy the defect within a time-period set by the Secretary General. If the claimant complies with the order to remedy the defect within the set deadline, the statement of claim shall be deemed to have been submitted on the date on which it was first received. If the claimant does not comply with the order to remedy the defect within the set deadline, the Secretary General may declare the proceedings terminated (Article 34 paragraph 3). This shall not prevent the claimant from raising the same claims at a later time in another proceeding.

(4) The Secretary General shall transmit the statement of claim to the respondent if no order to remedy pursuant to paragraph 3 of this Article was issued or if the claimant complied with such an order. The Secretary General may 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 paragraph 1.

ANSWER TO THE STATEMENT OF CLAIM

Article 8

(1) The Secretary General shall request the respondent to submit to the Secretariat an answer to the statement of claim (Article 12 paragraph 1) within a period of 60 days upon receipt of the statement of claim.

(2) The answer to the statement of claim shall contain the following information:

2.1 the full name, address, including electronic mail address, and other contact details of the respondent;

2.2 the nationalities of the parties;

2.3 without prejudice to Article 24 paragraph 1, comments in response to any statements contained in the statement of claim under Article 7 paragraph 2.7 or with respect to the matters covered therein;

2.4 comments on the request for relief and the facts upon which the statement of claim is based, as well as the respondent's specific request for relief;

2.5 particulars regarding the number of arbitrators in accordance with Article 17; and

2.6 the nomination of an arbitrator if the dispute shall be decided by a panel of three arbitrators, or a request that the arbitrator or the chairperson be appointed by the Board.

COUNTERCLAIM

Article 9

(1) Claims by the respondent against the claimant may be raised as counterclaims in the same proceedings.

(2) Articles 7, 10 and 11 apply to counterclaims.

(3) The arbitral tribunal may return the counterclaim to the Secretariat to be addressed in separate proceedings if:

3.1 the parties are not identical; or

3.2 a counterclaim submitted after the answer to the statement of claim would result in a substantial delay in the main proceedings.

(4) The arbitral tribunal shall give the claimant the opportunity to submit an answer to an admitted counterclaim. Article 8 applies to an answer to the counterclaim.

REGISTRATION FEE

Article 10

(1) The claimant shall pay the registration fee net of any charges in the amount stipulated in Annex 3 within the time limit set by the Secretary General. Likewise, in the case of joinder of a third party (Article 14), the requesting party shall pay a registration fee.

(2) If there are more than two parties to the arbitration, the registration fee shall be increased by 10 percent for each additional party, up to a maximum increase of 50 percent.

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

(4) The statement of claim and any request for joinder of a third party shall be sent to the other parties only after full payment of the registration fee. The Secretary General may grant a reasonable extension of the time period for payment of the registration fee. If payment is not effected by the deadline, the Secretary General may declare the proceedings terminated (Article 34 paragraph 3). This shall not prevent the claimant from raising the same claims at a later time in another proceeding.

(5) If proceedings under the Vienna Investment Mediation Rules are commenced before, during or after arbitral proceedings under the Vienna Investment Arbitration Rules between the same parties and concerning the same subject matter, no further registration fee will be charged in the subsequently commenced proceedings.

TRANSMISSION OF FILE

Article 11

The Secretary General shall transmit the file to the arbitral tribunal if:

- the Secretariat has received the statement of claim (counterclaim) in accordance with the requirements of Article 7; and
- all members of the arbitral tribunal have been appointed; and
- the advance on costs pursuant to Article 42 has been paid in full.

WRITTEN COMMUNICATIONS, TIME LIMITS AND DISPOSAL OF FILE

Article 12

(1) A statement of claim and an answer to the statement of claim, including exhibits, shall be submitted either electronically or in hardcopy form in the number of copies necessary to provide each party with a copy. The Secretary General may require a statement of

claim and an answer to the statement of claim to be submitted in both forms if necessary.

(2) After transmission of the file to the arbitral tribunal, all written communications and exhibits shall be sent to each party and each arbitrator in the manner stipulated by the arbitral tribunal. The Secretariat shall receive all written communications between the arbitral tribunal and the parties in electronic form.

(3) Written communications shall be sent in hardcopy form by registered mail, letter with confirmation of receipt, courier service, or in electronic form, or by any other means of communication that provides a record of sending.

(4) Written communications shall be sent to the address of the addressee for whom it is intended, as last notified. Once a party has appointed a representative, the written communication shall be sent to the representative's address, as last notified.

(5) Written communications shall be deemed to have been received on the day

5.1 the addressee has actually received the written communication; or

5.2 receipt can be presumed if the written communication was sent in accordance with paragraphs 3 and 4 of this Article.

(6) If a statement of claim against multiple respondents cannot be transmitted to all respondents, upon request of the claimant the arbitration shall proceed only against those respondents that received the statement of claim. Upon request of the claimant, the statement of claim against the remaining respondents shall be addressed in a separate proceeding.

(7) Time limits shall start to run on the day following the day of receipt (paragraph 5) of the respective written communication triggering the commencement of the time limit. If this day is an official holiday or a non-business day at the place of receipt, the time limit shall start to run on the next business day. Official holidays or non-business days falling during a time period shall not interrupt the continuation or extend the time limit. If the last day of the time limit is an official holiday or a non-business day at the place of receipt, the time limit shall end on the next business day.

(8) A time limit relating to any written communication is satisfied if it is sent in the manner stipulated in paragraphs 3 and 4 of this Article on the last day of the time limit. Time limits may be extended where sufficient grounds for such extension are considered to exist.

(9) After termination of the proceedings (Article 34), the Secretariat may dispose of the entire file of a case, with the exception of decisions (Article 35).

REPRESENTATIVES

Article 13

In the proceedings before the arbitral tribunal, the parties may be represented or advised by persons of their choice. The Secretary General or the arbitral tribunal may at any time request evidence that the representative has the authority to represent the party.

THIRD-PARTY FUNDING

Article 13a

(1) A party shall disclose the existence of any third-party funding 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 third-party funding arrangement.

(2) If a party discloses third-party funding prior to the constitution of the arbitral tribunal, the Secretary General shall inform any arbitrator nominated for appointment or already appointed of such disclosure for purposes of completing the arbitrator declaration (Article 16 paragraph 3).

(3) If it deems it necessary, the arbitral tribunal may 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.

JOINDER OF THIRD PARTIES, NON-DISPUTING AND NON-DISPUTING TREATY PARTY SUBMISSIONS, CONSOLIDATION

JOINDER OF THIRD PARTIES

Article 14

- (1) If a dispute has been submitted to arbitration pursuant to a contract, the joinder of a third party in an arbitration, as well as the manner of such joinder, shall be decided by the arbitral tribunal upon the request of a party or a third party after hearing all parties and the third party to be joined as well as after considering all relevant circumstances.
- (2) The request for joinder shall contain the following information:
 - 2.1 the full name, address, including electronic mail address, and other contact details of the third party;
 - 2.2 the grounds upon which the request for joinder is based; and
 - 2.3 the requested manner of joinder of the third party.
- (3) If a request for joinder of a third party is made with a statement of claim,
 - 3.1 it shall be submitted to the Secretariat. The provisions of Article 7 et seqq shall apply by analogy. The Secretary General shall transmit the statement of claim to the third party to be joined as well as to the other parties for comments;
 - 3.2 the third party may participate in the constitution of the arbitral tribunal pursuant to Article 18 if no arbitrator has yet been appointed; and
 - 3.3 the arbitral tribunal shall return the statement of claim with a request for joinder of a third party to the Secretariat to be treated in separate proceedings, if the arbitral tribunal refuses, in accordance with paragraph 1, to grant a request for joinder of a third party made with a statement of claim. In this case, the Board may revoke any confirmed nomination or appointment of arbitrators and order the renewed constitution of the arbitral tribunal or arbitral tribunals in accordance with Article 17 et seqq, if the third party participated in the constitution of the arbitral tribunal in accordance with paragraph 3.2.

NON-DISPUTING PARTY AND NON-DISPUTING TREATY PARTY SUBMISSIONS

Article 14a

- (1) If a dispute has been submitted to arbitration pursuant to a treaty or statute, a request of a non-disputing party to make written submissions on a factual or legal issue within the scope of the dispute submitted to arbitration pursuant to a treaty or statute shall be decided by the arbitral tribunal after hearing all parties as well as after considering all relevant circumstances. The arbitral tribunal may also invite such written submissions from a non-disputing party.
- (2) A non-disputing treaty party shall have the right to make written submissions on questions of the interpretation of a treaty at issue in the dispute and pursuant to which the dispute has been submitted to arbitration. The arbitral tribunal may also invite such written submissions from a non-disputing treaty party.
- (3) The arbitral tribunal may determine the format, length and scope of submissions made pursuant to this Article. The arbitral tribunal may provide the non-disputing party or non-disputing treaty party with access to relevant submissions and documents filed in the proceeding, taking into consideration the views of the parties.
- (4) The parties shall have the right to make observations on written submissions made pursuant to this Article.

CONSOLIDATION

Article 15

- (1) Upon a party's request, two or more arbitral proceedings administered by VIAC may be consolidated if:
 - 1.1 the parties agree to the consolidation; or
 - 1.2 the same arbitrator(s) was/were nominated or appointed;and the place of arbitration is the same.
- (2) The Board shall decide on a request for consolidation after hearing the parties and the arbitrators already appointed. The Board

shall consider all relevant circumstances in its decision, including the compatibility of the arbitration agreements and the respective stage of the arbitral proceedings.

ARBITRAL TRIBUNAL

GENERAL PROVISIONS

Article 16

(1) The parties shall be free to designate the persons they wish to nominate as arbitrators. Any person with full legal capacity may act as arbitrator, provided the parties have not agreed upon any particular additional qualification requirements. The arbitrators have a contractual relationship with the parties and shall render their services to the parties.

(2) The arbitrators shall perform their mandate independently of the parties, impartially and to the best of their knowledge and ability, and shall not be bound by any instruction. They have the duty to keep confidential all information acquired in the course of their duties.

(3) A person who intends to accept an appointment as an arbitrator shall, before his appointment, sign and submit to the Secretary General a declaration in the form made available by VIAC confirming his (i) impartiality and independence; (ii) availability; (iii) qualification; (iv) acceptance of office; and (v) submission to the Vienna Investment Arbitration Rules.

(4) An arbitrator shall disclose by written declaration all circumstances that could give rise to doubts as to his impartiality, independence or availability or that conflict with the agreement of the parties. The duty to immediately disclose such circumstances continues to apply throughout the arbitration.

(5) Members of the Board may be nominated as arbitrators by the parties or co-arbitrators, but shall not be appointed as arbitrators by the Board.

(6) The conduct of any or all arbitrators (Article 28 paragraph 1) may be taken into consideration by the Secretary General in determining the arbitrators' fees (Article 44 paragraphs 2, 7 and 10).

CONSTITUTION OF THE ARBITRAL TRIBUNAL

Article 17

(1) The parties may agree whether the arbitral proceedings will be conducted by a panel of three arbitrators or a sole arbitrator. The parties may also agree on the manner of appointment of the arbitrators. In the absence of an agreement, paragraphs 2 to 8 of this Article shall apply.

(2) Absent agreement on the number of arbitrators, the dispute shall be decided by a panel of three arbitrators. If the amount in dispute does not exceed EUR 10 million, the dispute shall be decided by a sole arbitrator, unless the Board, having due regard to the parties' views, considers that the complexity of the case or other relevant circumstances of the case warrant the appointment of a panel of three arbitrators.

(3) If the dispute is to be resolved by a sole arbitrator, the parties shall jointly nominate a sole arbitrator and indicate the arbitrator's name, address, including electronic mail address, and other contact details within 30 days after receiving the Secretary General's request. If such nomination is not made within this time period, the sole arbitrator shall be appointed by the Board.

(4) If the dispute is to be resolved by a panel of arbitrators, each party shall nominate an arbitrator (the claimant in the statement of claim and the respondent in the answer to the statement of claim). If a party fails to do so, the Secretary General shall request that party to submit the name, address, including electronic mail address, and other contact details of its nominee within 30 days after receiving the request. If such nomination is not made within this time period, that arbitrator shall be appointed by the Board.

(5) If the dispute is to be resolved by a panel of arbitrators, the co-arbitrators shall jointly nominate a chairperson and indicate his name, address, including electronic mail address, and other contact details within 30 days after receiving the Secretary General's request. If such nomination is not made within this time period or if a party so requests in its statement of claim or answer to the statement of claim, the chairperson shall be appointed by the Board.

(6) If the chairperson is to be appointed by the Board, the Secretary General shall transmit a list of candidates for appointment as chairperson to the parties and allow them to strike one name from the list and rank the remaining candidates in order of preference. The Board shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Board shall select one of them.

(7) The parties are bound by their nomination of arbitrator once the nominated arbitrator has been confirmed by the Board (Article 19).

(8) Arbitrators shall have nationalities different from those of the parties, unless otherwise agreed by the parties.

CONSTITUTION OF THE ARBITRAL TRIBUNAL IN MULTI-PARTY PROCEEDINGS

Article 18

(1) The constitution of the arbitral tribunal in multi-party proceedings shall be conducted in accordance with Article 17, with the following additional provisions:

(2) If the dispute is to be resolved by a panel of arbitrators, the side of claimant and the side of respondent shall each jointly nominate an arbitrator.

(3) Participation of a party in the joint nomination of an arbitrator shall not constitute consent to multi-party arbitration. If the admissibility of a multi-party arbitration is disputed, the arbitral tribunal shall decide thereon upon request after hearing all parties as well as after considering all relevant circumstances.

(4) If pursuant to paragraph 2 of this Article a joint arbitrator is not nominated within the set time period, the Board shall appoint the arbitrator for the defaulting party/parties. In exceptional cases, after granting the parties the opportunity to comment, the Board may revoke appointments already made and appoint new co-arbitrators or all arbitrators.

CONFIRMATION OF THE NOMINATION

Article 19

(1) After an arbitrator has been nominated, the Secretary General shall obtain the arbitrator's declarations pursuant to Article 16 paragraphs 3 and 4. The Secretary General shall forward a copy of these statements to the parties. The Board shall confirm the nominated arbitrator if no doubts exist as to the impartiality and independence of the arbitrator and the ability to carry out the mandate.

(2) Prior to the decision of the Board, the Secretary General shall request comments from the arbitrator to be confirmed and from the parties. All comments shall be communicated to the parties and the arbitrator.

(3) Upon confirmation, the nominated arbitrator shall be deemed appointed.

(4) If the Board refuses to confirm a nominated arbitrator, the Secretary General shall request the party/parties entitled to nominate the arbitrator, or the co-arbitrators to nominate a different arbitrator or chairperson within 30 days. Articles 16 to 18 shall apply by analogy. If the Board refuses to confirm the newly nominated arbitrator, the right to nominate shall lapse and the Board shall appoint the arbitrator.

CHALLENGE OF ARBITRATORS

Article 20

(1) After his appointment, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if the arbitrator does not fulfil the qualifications agreed by the parties. A party may challenge the arbitrator whom it nominated, or in whose nomination it has participated, only for reasons of which the party became aware after the nomination or its participation in the nomination.

(2) A party's challenge of an appointed arbitrator shall be submitted to the Secretariat within 15 days from the date the party making the challenge became aware of the grounds for the challenge. The challenge shall specify the grounds for the challenge and include corroborating materials to substantiate the challenge.

(3) If the challenged arbitrator does not resign, the Board shall rule on the challenge. Before the Board makes a decision, the Secretary General shall request comments from the challenged arbitrator and the other party/parties. The Secretary General may also request comments from other persons. All comments shall be communicated to the parties and the arbitrators.

(4) The arbitral tribunal, including the challenged arbitrator, may continue the arbitration while the challenge is pending. The arbitral tribunal may not issue an award until after the Board has ruled on the challenge.

PREMATURE TERMINATION OF THE ARBITRATOR'S MANDATE

Article 21

(1) The mandate of an arbitrator terminates prematurely if:

- 1.1 parties so agree; or
- 1.2 the arbitrator resigns; or
- 1.3 the arbitrator dies; or
- 1.4 the arbitrator was successfully challenged; or
- 1.5 the arbitrator is removed from office by the Board.

(2) Either party may request that an arbitrator be removed from office if the arbitrator is prevented from performing his duties more than temporarily or otherwise fails to perform his duties, including also the duty to proceed without any undue delay. The party shall submit the request to the Secretariat. If it is apparent to the Board that any incapacity is not merely temporary, or that the arbitrator is not performing his duties, the Board may remove an arbitrator from office even without a party's request. The Board shall decide on the removal after granting the parties and the affected arbitrator the opportunity to comment.

EFFECTS OF THE PREMATURE TERMINATION OF THE ARBITRATOR'S MANDATE

Article 22

(1) If an arbitrator's mandate terminates prematurely (Article 21), the arbitrator shall be replaced. The appointment of a substitute arbitrator shall be made in accordance with the appointment procedure agreed by the parties. Absent any such agreement, the Secretary General shall request that

- 1.1 the parties, in the case of a sole arbitrator; or,
- 1.2 the remaining co-arbitrators, in the case of the chairperson of a tribunal; or,
- 1.3 the nominating party or the party on whose behalf the arbitrator was appointed, when the arbitrator was nominated by a party or was appointed on behalf of a party;

nominate a substitute arbitrator within 30 days – in the cases addressed by paragraphs 1.1 and 1.2 of this Article jointly – and indicate the nominee's name, address, including electronic mail address, and other contact details. Articles 16 to 18 apply by analogy. If such nomination is not made within this time period, the Board shall appoint the substitute arbitrator. If a substitute arbitrator is successfully challenged (Article 21 paragraph 1.4), the right to nominate a substitute arbitrator shall lapse and the Board shall appoint the substitute arbitrator.

(2) If an arbitrator's mandate terminates prematurely pursuant to Article 21, the new arbitral tribunal shall determine, after requesting comments from the parties, whether and to what extent previous stages of the arbitration shall be repeated.

(3) The cost implications of the premature termination of the arbitrator's mandate and of the appointment of a substitute arbitrator shall be based on Article 42 paragraph 12 and Article 44 paragraph 11.

CHALLENGE OF EXPERTS

CHALLENGE OF EXPERTS

Article 23

Article 20 paragraphs 1 and 2 shall apply by analogy to the challenge of experts appointed by the arbitral tribunal. The arbitral tribunal shall decide on the challenge.

JURISDICTION OF THE ARBITRAL TRIBUNAL

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Article 24

(1) A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the first pleading on the merits after the

constitution of the arbitral tribunal. A party is not precluded from raising such an objection by the fact that it has nominated an arbitrator pursuant to Article 17 or has participated in the nomination of an arbitrator pursuant to Article 18. An objection that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to exceed the scope of its authority is raised during the arbitration. A later objection shall be barred in both cases; however, if the arbitral tribunal considers the delay to be sufficiently excused, it may admit a later objection.

(2) The arbitral tribunal shall decide on its own jurisdiction. The decision on jurisdiction may be made together with the decision on the merits or in a separate award. Where the arbitral tribunal declines jurisdiction, it shall, upon the request of one of the parties, decide on the parties' cost obligations.

EARLY DISMISSAL OF CLAIMS, COUNTERCLAIMS AND DEFENSES

Article 24a

(1) A party may apply to the arbitral tribunal in writing for the early dismissal of a claim, counterclaim or defense on the basis that:

- 1.1 a claim, counterclaim or defense is manifestly outside the jurisdiction of the arbitral tribunal;
- 1.2 a claim, counterclaim or defense is manifestly inadmissible; or
- 1.3 a claim, counterclaim or defense is manifestly without legal merit.

(2) A party shall file its application for early dismissal 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. The party shall state in detail the facts and legal basis supporting its application. When filing its application for early dismissal with the arbitral tribunal, the party applying for early dismissal shall send a copy of its application to all other parties.

(3) The arbitral tribunal, in its discretion, may allow the application for early dismissal to proceed. If the application is allowed to proceed, the arbitral tribunal shall, after giving the other parties the opportunity to make written submissions on the application, decide whether to grant, in whole or in part, the application for early dismissal.

(4) Within 60 days of receiving the last written submission pursuant to paragraph 3 of this Article, the arbitral tribunal shall decide on the application for early dismissal in an order or award, unless the Secretary General in exceptional circumstances extends this period of time.

PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

PLACE OF ARBITRATION

Article 25

(1) The parties are free to agree on the place of arbitration. Absent party agreement, the place of arbitration shall be determined by the arbitral tribunal.

(2) The arbitral tribunal may deliberate or take procedural actions at any location it deems appropriate, without thereby resulting in a change of the place of arbitration.

LANGUAGE OF THE PROCEEDINGS

Article 26

Absent party agreement on the language(s) of the arbitration, immediately after transmission of the file, the arbitral tribunal shall determine the language(s), having due regard to all circumstances.

APPLICABLE LAW, AMIABLE COMPOSITEUR

Article 27

(1) The arbitral tribunal shall decide the dispute in accordance with the law or rules of law agreed upon by the parties. Unless the parties have expressly agreed otherwise, any agreement as to a given national law or national legal system shall be construed as a direct reference to that national substantive law and not to the national conflict-of-laws rules.

(2) If the parties have not determined the applicable law or rules of law, the arbitral tribunal shall apply the applicable law or rules of law which it considers appropriate, including any relevant treaties, relevant national laws of any State, any relevant international custom and general principles of law.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only in cases where the parties have expressly authorized it to do so.

CONDUCT OF THE ARBITRATION

Article 28

(1) 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 at its own discretion. The arbitral tribunal shall treat the parties fairly. The parties shall be granted the right to be heard at every stage of the proceedings

(2) Upon prior notice, the arbitral tribunal may *inter alia* consider pleadings, the submission of evidence, and requests for the taking of evidence to be admissible only up to a certain point in time of the proceedings.

(3) At any stage of the proceedings, the arbitral tribunal is entitled to facilitate the parties' endeavors to reach a settlement.

ESTABLISHING THE FACTS OF THE CASE

Article 29

(1) If the arbitral tribunal considers it necessary, it may on its own initiative collect evidence, question parties or witnesses, request the parties to submit evidence, and call experts. Article 43 shall apply if costs are incurred as a result of the taking of evidence and, in particular, the appointment of experts.

(2) The arbitration shall proceed notwithstanding the failure of any party to participate.

ORAL HEARING

Article 30

(1) Unless the parties have agreed otherwise, the arbitral tribunal shall decide whether the proceedings should be conducted orally or in writing. If the parties have not excluded an oral hearing, upon any party's request the arbitral tribunal shall hold such a hearing at an appropriate stage of the proceedings. Having due regard to the views of the parties and the specific circumstances of the case, the arbitral tribunal may decide to hold an oral hearing in person or by other means. The parties shall in any case have the opportunity to acknowledge and comment on the requests and pleadings of the other parties and on the result of the evidentiary proceedings.

(2) The date of the oral hearing shall be fixed by the chairperson or the sole arbitrator. Hearings shall not be open to the public. The chairperson or the sole arbitrator shall prepare and sign minutes of the hearing, which shall contain at a minimum a summary of the hearing and its results.

DUTY TO OBJECT

Article 31

If a party has knowledge of a violation by the arbitral tribunal of a provision of the Vienna Investment Arbitration Rules or other provisions applicable to the proceedings, it shall immediately file an objection with the arbitral tribunal, failing which the party shall be deemed to have waived its right to object.

CLOSURE OF THE PROCEEDINGS AND TIME FOR RENDERING THE AWARD

Article 32

(1) As soon as the arbitral tribunal is convinced that the parties have had sufficient opportunity to make submissions and to offer evidence, the arbitral tribunal shall declare the proceedings closed as to the matters to be decided in the award. The arbitral tribunal may reopen the proceedings at any time.

(2) The award shall be rendered no later than six months after the last hearing concerning matters to be decided in an award or the filing of the last authorized submission concerning such matters, whatever is the later. The Secretary General may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative. Exceeding the time limit for the award will not render the arbitration agreement invalid or deprive the arbitral tribunal of its jurisdiction.

INTERIM AND CONSERVATORY MEASURES / SECURITY FOR COSTS

Article 33

- (1) Unless the parties have agreed otherwise, as soon as the file has been transmitted to the arbitral tribunal (Article 11), the arbitral tribunal may, at the request of a party, order interim or conservatory measures against another party as well as amend, suspend or revoke any such measures. The other parties shall be heard before the arbitral tribunal renders any decision on interim or conservatory measures. The arbitral tribunal may require any party to provide appropriate security in connection with such a measure. The parties shall comply with such orders, irrespective of whether they are enforceable before national courts.
- (2) Any orders for interim or conservatory measures pursuant to this Article shall be in writing. In an arbitration with more than one arbitrator, the signature of the chairperson shall suffice. If the chairperson is hindered from acting, the signature of another arbitrator shall suffice, provided the arbitrator signing the order records the reasons for the absence of the chairperson's signature.
- (3) Unless the parties have agreed otherwise, orders for interim or conservatory measures shall state the reasons upon which they are based. The order shall identify the date on which it was issued and the place of arbitration.
- (4) Orders for interim and conservatory measures shall be retained in the same manner as awards (Article 36 paragraph 5).
- (5) The provisions of paragraphs 1 to 4 of this Article do not prevent the parties from applying to any competent national authority for interim or conservatory measures. A request to a national authority to order such measures or to enforce such measures already ordered by the arbitral tribunal shall not constitute an infringement or waiver of the arbitration agreement and shall not affect the powers of the arbitral tribunal. The parties shall immediately inform the Secretariat and the arbitral tribunal of any such request as well as of all measures ordered by the national authority.
- (6) The arbitral tribunal may, at the request of a party, 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. When deciding on a request for security for costs, the arbitral tribunal shall give all parties the opportunity to present their views.
- (7) If a party fails to comply with an order by the arbitral tribunal for security for costs, the arbitral tribunal may, upon request, suspend in whole or in part, or terminate the proceedings (Article 34 paragraph 2.4).

MEANS OF TERMINATION OF THE PROCEEDINGS

Article 34

Arbitral proceedings are terminated:

- (1) by the rendering of the final award (Articles 36 and 37 paragraph 1); or
- (2) by an order of the arbitral tribunal, if
 - 2.1 the claimant withdraws its statement of claim, unless the respondent objects and a legitimate interest of the respondent in obtaining a final resolution of the dispute exists;
 - 2.2 the parties agree to the termination of the arbitration and communicate this agreement to the arbitral tribunal and to the Secretary General;
 - 2.3 the continuation of the proceedings has become impossible, in particular because the parties to the arbitration do not pursue the arbitration further despite a written order from the arbitral tribunal, which refers to the possibility of terminating the arbitration;
 - 2.4 a party fails to comply with an order by the arbitral tribunal for security for costs (Article 33 paragraph 7); or
- (3) by a declaration of the Secretary General
 - 3.1 for failure to comply with an order to remedy (Article 7 paragraph 3) or a payment order (Article 10 paragraph 4 and Article 42 paragraphs 3 and 5);
 - 3.2 in case of paragraphs 2.1 to 2.3 if the file has not yet been transmitted to the arbitral tribunal.

DECISIONS OF THE ARBITRAL TRIBUNAL

Article 35

- (1) Every award and every other decision of the arbitral tribunal requires a majority ruling of its panel members. If the arbitrators

cannot form a majority, the chairperson shall decide.

(2) The chairperson may decide questions of procedure alone if so authorized by the co-arbitrators.

ARBITRAL AWARD

Article 36

(1) Awards shall be in writing. Awards shall state the reasons on which they are based unless all parties have agreed in writing or in the oral hearing that the award may exclude the reasons.

(2) The award shall identify the date on which it was issued and the place of arbitration (Article 25).

(3) All original copies of an award shall be signed by all arbitrators. 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. If the award is a majority award and not a unanimous award, this shall be stated upon request of the dissenting arbitrator.

(4) All original copies of the award shall be signed by the Secretary General and bear the VIAC stamp, which shall confirm that it is an award of VIAC, rendered and signed by one or more arbitrators appointed under the Vienna Investment Arbitration Rules.

(5) 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. In this case a copy of the award in hardcopy form may be sent at a later stage. Article 12 paragraphs 3, 4 and 5 apply. The Secretariat shall retain an original copy of the award and the documentation of proof of sending.

(6) Upon request of a party, the sole arbitrator or chairperson (or in case he is prevented from acting, another arbitrator) or, in case they are prevented from doing so, the Secretary General shall confirm that the award is final and binding on all original copies.

(7) By agreeing to the Vienna Investment Arbitration Rules, the parties undertake to comply with the terms of the award.

AWARD ON AGREED TERMS AND RECORDED SETTLEMENT

Article 37

(1) Upon request of the parties, the arbitral tribunal may render an award (Article 36) on agreed terms reflecting the content of a settlement which they have reached.

(2) The parties may request that the content of a settlement which they have reached be recorded by the arbitral tribunal. In this case, the proceedings are terminated in accordance with Article 34 paragraph 2.2.

DECISION ON COSTS

Article 38

(1) When the proceedings are terminated, upon request of a party, the arbitral tribunal shall set forth, in the final award or by separate award, the costs of the arbitration as determined by the Secretary General pursuant to Article 44 paragraph 1.1 and determine the amount of the appropriate costs of the parties pursuant to Article 44 paragraph 1.2, as well as other additional expenses pursuant to Article 44 paragraph 1.3.

(2) The arbitral tribunal shall also establish who will bear the costs of the proceedings or the apportionment of these costs. Unless the parties have agreed otherwise, the arbitral tribunal shall decide on the allocation of costs according to its own discretion. The conduct of any or all parties as well as their representatives (Article 13), and in particular their contribution to the conduct of efficient and cost-effective proceedings, may be taken into consideration by the arbitral tribunal in its decision on costs according to this Article.

(3) Irrespective paragraphs 1 and 2, upon request by a party, the arbitral tribunal may at any stage during the arbitral proceedings make decisions on costs pursuant to Article 44 paragraphs 1.2 and 1.3 and order payment.

CORRECTION, CLARIFICATION AND SUPPLEMENTATION OF THE ARBITRAL AWARD

Article 39

(1) Within 30 days of receipt of the award, any party may file the following applications with the Secretariat for the arbitral tribunal:

- 1.1 to correct any computational, typographical, printing or similar errors in the award;
- 1.2 to clarify specific parts of the award;
- 1.3 to render an additional award on claims made in the arbitration but not resolved in the award.

(2) The arbitral tribunal shall decide on such an application. The other parties shall be heard before the arbitral tribunal makes its decision. The arbitral tribunal shall set a time limit for comments, which should not exceed 30 days. The Secretary General may determine an advance on costs to cover additional expenses and fees of the arbitral tribunal and administrative fees (Article 42 paragraph 12). The additional arbitrators' fees and additional administrative fees are determined by the Secretary General according to his own discretion.

(3) Upon its own initiative, the arbitral tribunal may issue corrections pursuant to paragraph 1.1 or supplementations pursuant to paragraph 1.3 of this Article within 30 days of the date of the award.

(4) Article 36 applies to the supplementation of the award. Corrections and clarifications shall be issued in the form of an addendum and shall constitute an integral part of the arbitral award.

REMISSION TO THE ARBITRAL TRIBUNAL

Article 40

When a national court remits proceedings to the arbitral tribunal, the provisions of the Vienna Investment Arbitration Rules on the arbitral proceedings shall apply by analogy. The Secretary General and the Board may take any measures necessary to enable the arbitral tribunal to comply with the requirements of the remission. The Secretary General may determine an advance on costs to cover additional expenses and fees of the arbitral tribunal and administrative fees (Article 42 paragraph 12). The additional arbitrators' fees and additional administrative fees are determined by the Secretary General according to his own discretion.

PUBLICATION OF INFORMATION AND AWARDS

Article 41

(1) By agreeing to submit a dispute to arbitration pursuant to the Vienna Investment Arbitration Rules, the parties shall be deemed to have agreed that VIAC may publish certain information on the arbitral proceedings. VIAC may publish information in the public interest. Such information shall be limited to the nationality of the parties, the identity and nationality of the members of the arbitral tribunal, the date of commencement of the arbitration, the instrument under which the arbitration has been commenced, and whether the proceedings are pending or have been terminated.

(2) VIAC may also publish on the VIAC website, in legal journals or VIAC's own publications anonymized summaries or extracts of decisions and awards. Such summaries or extracts shall be anonymized with the exception of information that may be published under paragraph 1 of this Article.

COSTS

ADVANCE ON COSTS

Article 42

(1) The Secretary General shall fix the advance on costs for VIAC's prospective administrative fees, the prospective arbitrators' fees and the prospective expenses, including any applicable value-added tax, separately for claims and counterclaims.

(2) Claims raised by way of set-off (Article 44 paragraph 6) shall – for the purpose of calculating the advance on costs – be treated as separate claims to the extent that these claims may require the arbitral tribunal to consider additional matters.

(3) For requests for joinder (Article 14), the Secretary General may fix separate advances on costs (paragraph 1) having regard to the circumstances of the case.

(4) 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 upon receipt of the request for payment.

(5) In multi-party proceedings, one half of the advance on costs shall be paid jointly by the claimants and one half jointly by the respondents, unless otherwise determined by the Secretary General having regard to the circumstances of the case.

- (6) Where counterclaims or claims by way of set-off are submitted and separate advances on costs are fixed, the Secretary General may decide that each party shall pay the advance on costs corresponding to its claims.
- (7) Where the Secretary General has previously fixed advances on costs pursuant to paragraph 1 to 3, these shall be replaced by the advances fixed pursuant to paragraphs 5 and 6 and the amount of any advance paid previously by any party shall be credited towards its share of advances as determined by the Secretary General pursuant to paragraphs 5 and 6.
- (8) By agreeing to the Vienna Investment Arbitration Rules, the parties mutually undertake to bear their respective share of the advance on costs in equal shares pursuant to this Article.
- (9) If the advance on costs allocated to one party is not received or is not received in full within the time limit specified, the Secretary General shall inform the other party/parties and request payment of the outstanding amount within 30 days upon receipt of the request. This shall not affect the obligation of the non-paying party to bear its share of the advance on costs pursuant to this Article.
- (10) If a party fails to fulfil its share of the payment obligations pursuant to this Article, and if the other party/parties pay(s) the respective share pursuant to paragraph 9 of this Article, upon the paying party's/parties' request and to the extent it finds that it has jurisdiction over the dispute the arbitral tribunal may order the non-paying party, by an award or other appropriate form, to reimburse the paying party/parties for the share accruing on it/them. This shall not affect the arbitral tribunal's authority and obligation to determine the final allocation of costs pursuant to Article 38.
- (11) In principle, the arbitral tribunal shall only address the claims or counterclaims, for which the advance on costs has been paid in full. If a payment is not made within the deadline set by the Secretary General, the arbitral tribunal may suspend the arbitral proceedings in whole or in part, or the Secretary General may terminate the arbitral proceedings (Article 34 paragraph 3) with respect to the relevant claims. This shall not prevent the parties from raising the same claims at a later time in another proceeding.
- (12) If an additional advance on costs is necessary and determined accordingly by the Secretary General, the procedure as outlined in paragraphs 1 to 11 of this Article shall apply. Until payment of the additional advance on costs, in principle, the arbitral tribunal shall not address the claims that led to the increase or additional advance on costs. If a payment is not made within the deadline set by the Secretary General, the arbitral tribunal may suspend the arbitral proceedings in whole or in part, or the Secretary General may terminate the arbitral proceedings (Article 34 paragraph 3).

ADVANCE ON COSTS FOR ADDITIONAL PROCEDURAL COSTS

Article 43

- (1) If the arbitral tribunal considers necessary certain procedural steps that would have cost implications, such as the appointment of experts, interpreters, or translators, a verbatim transcript of the proceedings, a site visit, or relocation of the hearing, then the arbitral tribunal shall notify the Secretary General and arrange for these prospective costs to be covered.
- (2) The arbitral tribunal may undertake the procedural steps provided for in paragraph 1 of this Article only once the prospective costs are sufficiently covered.
- (3) The arbitral tribunal shall decide which consequences for the proceedings shall arise, if any, from a failure to pay a required advance on costs pursuant to this Article.
- (4) All orders related to the procedural steps mentioned in paragraph 1 of this Article shall be undertaken by the arbitral tribunal for and on the account of the parties.

COMPOSITION AND CALCULATION OF THE PROCEDURAL COSTS

Article 44

- (1) The costs of the arbitration consist of:
- 1.1 the administrative fees of VIAC, the arbitrators' fees and the reasonable expenses (such as arbitrators' or tribunal secretary's travel and subsistence costs, costs for sending of communications, rent, court reporter fees), including any applicable value-added tax; as well as
 - 1.2 the parties' costs, i.e. the reasonable expenses of the parties for their legal representation; and
 - 1.3 other expenses related to the arbitration, in particular those listed in Article 43 paragraph 1.
- (2) The Secretary General shall calculate the administrative fees and the arbitrators' fees on the basis of the schedule of fees (Annex 3) according to the amount in dispute and determine these fees together with the expenses at the end of the proceedings (paragraph

1.1 of this Article). Prior to termination of the arbitral proceedings, the Secretary General may make payments on account to the arbitrators in consideration of the stage of the proceedings. The arbitral tribunal shall determine and fix the costs and other expenses outlined in paragraphs 1.2 and 1.3 of this Article in the award (Article 38).

(3) In fixing the amount in dispute, the Secretary General may deviate from the parties' determination if the parties have made only a partial claim or if a party has clearly undervalued its claim or assigned no value to it.

(4) If more than two parties are involved in an arbitration, the amount of administrative fees and arbitrators' fees listed in Annex 3 shall be increased by 10 percent for each additional party, up to a maximum increase of 50 percent. This increased amount will then be the basis for a further increase or decrease according to paragraph 8 of this Article.

(5) For counterclaims (Article 9), the Secretary General shall calculate and determine the administrative fees and arbitrators' fees separately.

(6) For claims raised by way of set-off against the principal claims, the Secretary General may calculate and determine the administrative and arbitrators' fees separately to the extent that these claims have required the arbitral tribunal to consider additional matters.

(7) For requests for joinder of third parties (Article 14), the Secretary General may calculate and determine the administrative fees and arbitrators' fees separately, having regard to the circumstances of the case.

(8) The arbitrators' fees listed in Annex 3 apply to sole arbitrators. The total fee for a panel of arbitrators is two-and-a-half times the rate of a sole arbitrator. The Secretary General may increase the arbitrators' fees according to his own discretion by a maximum total of 40 percent vis-à-vis the schedule of fees (Annex 3), in particular for especially complex cases or for especially efficient conduct of proceedings; conversely, the Secretary General may decrease the arbitrators' fees by a maximum total of 40 percent, in particular for inefficient conduct of proceedings.

(9) The fees listed in Annex 3 comprise all partial and interim decisions such as awards on jurisdiction, partial awards, decisions on the challenge of experts, orders for conservatory or interim measures, other decisions including additional procedural steps in setting aside proceedings, and procedural orders.

(10) A reduction in the amount in dispute shall be taken into consideration in the calculation of the administrative and arbitrators' fees only if the reduction was made before transmission of the file to the arbitral tribunal.

(11) If the proceedings or the arbitrator's mandate are prematurely terminated, the Secretary General may reduce the administrative and the arbitrators' fees according to his own discretion in consideration of the stage of the proceedings at the time of termination. If arbitral proceedings under the Vienna Investment Arbitration Rules are commenced before, during or after proceedings under the Vienna Investment Mediation Rules between the same parties and concerning the same subject matter, the Secretary General may apply this paragraph by analogy for the calculation of the arbitrators' fees.

(12) If proceedings under the Vienna Investment Mediation Rules are commenced before, during, or after arbitral proceedings under the Vienna Investment Arbitration 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 subsequently commenced proceedings.

(13) The fees listed in Annex 3 do not include value added tax, which may apply to the arbitrator's fees. Upon accepting their mandate, those arbitrators whose fees are subject to value added tax shall inform the Secretary General of the prospective amount of value added tax.

MISCELLANEOUS PROVISIONS

EXPEDITED PROCEEDINGS

Article 45

(1) The supplementary rules on expedited proceedings apply if the parties have expressly included them in their arbitration agreement or if the parties subsequently agree on their application. Such party agreement on the conduct of expedited proceedings shall occur no later than the submission of the answer to the statement of claim.

(2) Unless the rules on expedited proceedings provide otherwise, the general provisions of the Vienna Investment Arbitration Rules shall apply with the following deviations:

(3) The time limit for payment of the advance on costs pursuant to Article 42 shall be reduced to 15 days.

- (4) Counterclaims or set-off-claims are admissible only until the expiry of the time limit for submission of the answer to the statement of claim.
- (5) Expedited proceedings shall be conducted by a sole arbitrator, unless the parties have agreed on a panel of arbitrators.
- (6) If the dispute is to be decided by a sole arbitrator, the parties shall jointly nominate a sole arbitrator within 15 days of receiving such a request from the Secretary General. If the parties fail to nominate the sole arbitrator within this time limit, the Board shall appoint the sole arbitrator.
- (7) Where the dispute is to be decided by a panel of arbitrators, the claimant shall nominate an arbitrator in its statement of claim. The respondent shall nominate an arbitrator within 15 days of receipt of a request from the Secretary General. The arbitrators nominated by the parties shall nominate a chairperson within 15 days of receipt of a request from the Secretary General. If an arbitrator is not nominated within this time period, the Board shall appoint the arbitrator.
- (8) The arbitral tribunal shall render a final award within six months of transmission of the file, unless the proceedings are prematurely terminated. The Secretary General may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative. Exceeding the time limit for the award will not render the arbitration agreement invalid or deprive the arbitral tribunal of its jurisdiction.
- (9) The arbitration shall be administered in such a manner that the arbitral tribunal can render a final award within six months after the transmission of the file. Unless the arbitral tribunal determines otherwise, the following provisions shall apply:
- 9.1 After the submission of the statement of claim and the answer to the statement of claim, the parties will exchange only one further written submission.
- 9.2 The parties shall make all factual arguments in their written submissions and all written evidence shall be attached to the written submissions.
- 9.3 To the extent requested by a party or deemed necessary by the arbitral tribunal, the arbitral tribunal shall hold a single oral hearing, in which all evidence will be taken and all legal issues addressed.
- 9.4 No written submissions shall be filed after the oral hearing.

DISCLAIMER

Article 46

The liability of the arbitrator, the tribunal secretary, the Secretary General, the Deputy Secretary General, the Board and its members, as well as the Austrian Federal Economic Chamber and its employees for any act or omission in relation to the arbitration is excluded, unless such act or omission constitutes willful misconduct or gross negligence.

ENTRY INTO FORCE

Article 47

The Vienna Investment Arbitration Rules shall enter into force on 1 July 2021.

PART II

VIAC RULES OF INVESTMENT MEDIATION (“VIENNA INVESTMENT MEDIATION RULES”)

SCOPE OF APPLICATION OF THE VIENNA INVESTMENT MEDIATION RULES

Article 1

- (1) An agreement to submit a dispute to proceedings in accordance with the VIAC Rules of Investment Mediation (hereinafter “Vienna Investment Mediation Rules”) may be expressed in a contract, treaty, statute or other instrument, or through an offer by a party in a contract, treaty, statute or other instrument which is subsequently accepted by the other party by any means, including by the other party’s commencement of such proceedings.
- (2) Where the parties have agreed to submit their dispute to proceedings in accordance with the Vienna Investment Mediation Rules, the parties shall be deemed to have agreed that the proceedings shall be administered by VIAC.
- (3) Unless the parties have agreed otherwise, the Vienna Investment Mediation Rules shall apply in the version in effect at the time of the commencement of the proceedings if the parties, before or after the dispute has arisen, have agreed to submit their dispute to the Vienna Investment Mediation Rules.
- (4) The Vienna Investment Mediation Rules may be amended by a written agreement of all parties. Following the appointment of the mediator, any amendment is also subject to the mediator’s consent.
- (5) The Board may refuse to administer proceedings under the Vienna Investment Mediation Rules if any agreed amendments are incompatible with the Vienna Investment Mediation Rules.
- (6) To the extent the Vienna Investment Mediation Rules do not contain any rules on a specific issue and to the extent compatible with the Vienna Investment Mediation Rules, the Vienna Investment Arbitration Rules shall apply by analogy.

DEFINITIONS

Article 2

- (1) In the Vienna Investment Mediation Rules
 - 1.1 **proceedings** refer 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 third-party neutral and conducted under the Vienna Investment Mediation Rules;
 - 1.2 **third-party neutral** refers to a mediator, a conciliator, another neutral or several such neutrals who support the parties in the resolution of their dispute but have no authority to render a binding decision on the parties’ dispute; hereinafter, the term “mediator” is used as a substitute for all third-party neutrals;
 - 1.3 **party** refers to one or more parties who agree or have agreed to submit their dispute to the Vienna Investment Mediation Rules;
 - 1.4 **VIAC** refers Vienna International Arbitral Centre;
 - 1.5 **Board, Secretary General** and **Secretariat** shall have the meaning and functions set forth in Articles 2 and 4 of the VIAC Rules of Arbitration (“Vienna Rules”).
- (2) To the extent the terms used in the Vienna Investment Mediation Rules refer to natural persons, the form chosen shall apply to all genders. In practice, the terms in these rules shall be used in a gender-specific manner.
- (3) References to “Articles” without further specification relate to the relevant Articles of the Vienna Investment Mediation Rules.

COMMENCING THE PROCEEDINGS

Article 3

- (1) Proceedings shall be initiated by submitting a request. The proceedings shall commence on the date of receipt of the request by the Secretariat (Article 12 paragraph 1 Vienna Investment Arbitration Rules), in the event of an agreement of the parties to submit

their dispute to the Vienna Investment Mediation Rules. Absent such an agreement, the proceedings shall commence on the date on which such agreement was subsequently concluded by the parties.

(2) The request should include the following:

- 2.1 the full names, addresses, including electronic mail addresses, and other contact details of the parties and any comment on the parties' nationalities;
- 2.2 a short description of the facts and the dispute;
- 2.3 the amount in dispute;
- 2.4 the full name, address and other contact details of the mediator nominated, or attributes that a mediator to be appointed should have;
- 2.5 particulars or proposals regarding an agreement of the parties to submit their dispute for resolution under the Vienna Investment Mediation Rules, in particular as regards
 - i. the number of mediators;
 - ii. the language(s) to be used in the proceedings.

(3) If the request was not submitted jointly by all parties, the Secretary General informs the other parties of the receipt of such request and forwards it for comments within a set time limit.

REGISTRATION FEE

Article 4

- (1) If an agreement between the parties to submit their dispute to the Vienna Investment Mediation Rules already exists, the registration fee shall be paid net of any charges in the amount stipulated in Annex 3 within the time limit set by the Secretary General. Absent such agreement, the registration fee shall be paid only upon subsequent conclusion of such agreement.
- (2) If there are more than two parties to the proceedings, the registration fee shall be increased by 10 percent for each additional party, up to a maximum increase of 50 percent.
- (3) The registration fee is non-refundable. The registration fee shall not be deducted from the paying party's advance on costs.
- (4) If arbitral proceedings under the Vienna Investment Arbitration Rules are commenced before, during, or after the proceedings under the Vienna Investment Mediation Rules between the same parties and concerning the same subject matter, no further registration fee will be charged in the subsequently commenced proceedings.
- (5) 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 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 session(s). If the mediator deems it appropriate, the mediator may determine a different place for each session.

LANGUAGE OF THE PROCEEDINGS

Article 6

Immediately after transmission of the file (Article 9 paragraph 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 the manner of appointment, the Secretary General shall set a time limit and invite the parties to jointly nominate a mediator and indicate his name, address, including electronic mail address, and contact details.

- (2) The Secretariat may assist the parties in the joint nomination of the mediator in particular by proposing one or more persons 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 so doing, the Board shall give due consideration to the parties' preferences regarding the attributes of the mediator.
- (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) qualification, (iv) acceptance of office, and (v) submission to the Vienna Investment Mediation Rules. The mediator shall disclose in writing all circumstances that could give rise to doubts as to his/her 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 comment.
- (4) If there are no doubts as to the impartiality and independence of the mediator and his/her ability to duly carry out his/her 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. Prior to the decision of the Board, the Secretary General may request comments from the mediator to be confirmed and from the parties. All comments shall be communicated to the parties and the mediator. Upon confirmation, the nominated mediator shall be deemed appointed.
- (5) If the confirmation of a mediator is rejected or if the replacement of a mediator becomes necessary, paragraphs 1 to 4 shall apply *mutatis mutandis*.

ADVANCE ON COSTS AND COSTS

Article 8

- (1) 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 (such as travel and subsistence costs of the mediator, delivery charges, rent, etc), including any value-added tax. The preliminary advance on costs shall be paid by the parties prior to the transmission of the file to the mediator and within a time limit set by the Secretary General.
- (2) 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, they are shared pro rata. If the advance on costs allocated to one party is not received or is not received in full within the time limit specified, the Secretary General shall inform the other party/parties. The other party/parties is/are at liberty to bear the outstanding share of the advance on costs. If this share 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 (Article 11 paragraph 1.5).
- (3) If an additional advance on costs is necessary and determined accordingly by the Secretary General, in particular to cover the mediator's fees and anticipated expenses, paragraph 2 of this Article shall apply.
- (4) Upon termination of the proceedings, the Secretary General shall calculate the administrative fees and the mediator's fees and fix these fees together with the expenses.
- (5) The administrative fees shall be calculated on the basis of the schedule of fees (Annex 3) according to the amount in dispute. In fixing the amount in dispute, the Secretary General may deviate from the parties' determination if the parties clearly undervalued it or assigned no value to it. If more than two parties are involved in the proceedings, the amount of administrative fees listed in Annex 3 shall be increased by 10 percent for each additional party, up to a maximum increase of 50 percent.
- (6) 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.
- (7) Unless otherwise agreed in writing, the parties shall bear their own costs, including the costs of legal representation.
- (8) If arbitral proceedings under the Vienna Investment Arbitration Rules are commenced before, during, or after proceedings under the Vienna Investment 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 subsequently commenced proceedings.

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 preliminary advance on costs in accordance with Article 8 paragraph 1 has been paid in full.

(2) The mediator shall promptly discuss with the parties the manner in which the proceedings shall be conducted. The mediator 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 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.

(3) 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 as it considers appropriate to conduct proceedings remotely. In any case, the mediator shall seek to maintain fair treatment of the parties.

(4) The parties are free to select their mediation team. The mediator may offer guidance in this respect. Each party shall personally participate in a session with the mediator, or be represented by a duly appointed and authorized person having the authority to settle the dispute. The name, address and function of such persons shall be communicated to all parties and to the mediator in advance of the mediation or without delay. This communication shall also indicate the intended role of such person in the mediation.

(5) Throughout the proceedings, the parties shall act in good faith, fairly and respectfully.

(6) Sessions with the mediator are not public. Only the following individuals shall be permitted 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 (paragraph 4 of this Article) and who have signed a written confidentiality agreement in accordance with Article 12.

(7) If the mediator 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 legal, arbitral or other proceedings in respect of the same dispute, irrespective of whether proceedings are being conducted under the Vienna Investment Mediation Rules.

TERMINATION OF THE PROCEEDINGS

Article 11

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

- 1.1 an agreement of the parties to settle 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;
- 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 paragraphs 1 to 4;
 - ii. to comply with a payment order (Articles 4 and 8) in a timely manner.

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

(3) In the cases listed under paragraphs 1.1 to 1.4 and paragraph 2, the mediator shall immediately inform the Secretary General of the circumstance of the termination.

CONFIDENTIALITY, ADMISSIBILITY OF EVIDENCE AND SUBSEQUENT REPRESENTATION

Article 12

- (1) The individuals listed under Article 9 paragraph 6 shall treat as confidential any information 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 that would otherwise not have been obtained shall not be used in subsequent legal, arbitral or other proceedings. Any statements, views, proposals and admissions made during the proceedings as well as any party's willingness to settle the dispute amicably shall also remain confidential. Regarding any or all of the foregoing, the mediator shall not be called as a witness.
- (3) The obligations under paragraphs 1 and 2 shall not apply if the law governing these proceedings contains mandatory provisions to the contrary or if disclosure is required for the implementation or the enforcement of an agreement for the termination of these proceedings.
- (4) The fact that the proceedings pursuant to the Vienna Mediation Investment Rules 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 legal, arbitral or other proceedings regarding the dispute that constitutes or constituted the subject matter of the proceedings under the Vienna Investment Mediation Rules.

DISCLAIMER

Article 13

The liability of the mediator, the Secretary General, the Deputy Secretary General, the Board and its members, as well as the Austrian Federal Economic Chamber and its employees for any act or omission in relation to the proceedings under the Vienna Investment Mediation Rules is excluded, unless such act or omission constitutes willful misconduct or gross negligence.

ENTRY INTO FORCE

Article 14

The Vienna Investment Mediation Rules shall enter into force on 1 July 2021.

PART III

ANNEXES TO THE VIAC RULES OF INVESTMENT ARBITRATION AND MEDIATION¹

ANNEX 1

MODEL ARBITRATION AND MEDIATION CLAUSES

ARBITRATION CLAUSE

Parties may agree to submit to arbitration in accordance with the Vienna Investment Arbitration Rules any dispute, including under a contract, treaty, statute or other instrument and involving a State, State-controlled entity or intergovernmental organization.

Where the parties to a contract wish to submit a dispute to arbitration in accordance with the Vienna Investment Arbitration Rules, they may insert in the contract an arbitration clause in the following form:

Model Arbitration Clause for Contracts

All disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Investment Arbitration (Vienna Investment Arbitration Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules.

Parties may wish to stipulate the following in the arbitration clause:

- (1) the number of arbitrators (one or three) (Article 17 Vienna Investment Arbitration Rules);
- (2) the language(s) to be used in the arbitral proceedings (Article 26 Vienna Investment Arbitration Rules);
- (3) the substantive law applicable to the contractual relationship, the substantive law applicable to the arbitration agreement (Article 27 Vienna Investment Arbitration Rules), and the rules applicable to the proceedings (Article 28 Vienna Investment Arbitration Rules);
- (4) the place of arbitration (Article 25 Vienna Investment Arbitration Rules);
- (5) the applicability of the provisions on expedited proceedings (Article 45 Vienna Investment Arbitration Rules);
- (6) the scope of the arbitrators' confidentiality (Article 16 paragraph 2 Vienna Investment Arbitration Rules) and its extension regarding parties, representatives and experts.
- (7) If the parties wish to conduct Arb-Med-Arb proceedings, the following addition to the model arbitration clause should be included:

Furthermore, the parties agree to jointly consider, after due initiation of the arbitration, to conduct proceedings in accordance with the Mediation Investment Rules of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber (Vienna Investment Mediation Rules). Settlements that are generated in such proceedings shall be referred to the arbitral tribunal appointed in the arbitration. The arbitral tribunal may render an award on agreed terms reflecting the content of the settlement (Article 37 paragraph 1 Vienna Investment Arbitration Rules).

MEDIATION CLAUSES

Parties may agree to submit to mediation or other alternative dispute resolution methods in accordance with the Vienna Investment Mediation Rules any dispute, including under a contract, treaty, statute or other instrument and involving a State, State-controlled entity or intergovernmental organization.

Where the parties to a contract wish to submit a dispute to mediation or other alternative dispute resolution methods in accordance with the Vienna Investment Mediation Rules, they may insert in the contract a mediation clause in one of the following forms:

Model Clause 1: Optional Mediation

Regarding all disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, the parties agree to jointly consider proceedings in accordance with the Rules of Investment

¹ The Annexes 1-5 are an integral part of the VIAC Rules of Investment Arbitration and to the VIAC Rules of Investment Mediation

Mediation (Vienna Investment Mediation Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber.

Model Clause 2: Obligation to Refer Disputes to Mediation followed by Arbitration

All disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall first be submitted to proceedings in accordance with the Rules of Investment Mediation (Vienna Investment Mediation Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber.

In the event that within a period of [60]² days from commencing proceedings under the Vienna Investment Mediation Rules the dispute or claims are not resolved, they shall be finally settled under the Rules of Investment Arbitration (Vienna Investment Arbitration Rules) of VIAC by one or three arbitrators appointed in accordance with the said Rules.³

Model Clause 3: Obligation to Refer a Present Dispute to Mediation

The parties agree that the present dispute shall be submitted to proceedings in accordance with the Rules of Investment Mediation (Vienna Investment Mediation Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber. The proceedings shall be initiated by submitting a joint request. The registration fee shall be borne by the parties in equal shares.

Parties may wish to stipulate the following in the mediation clause:

- (1) the number of mediators or other third-party neutrals (e.g. one or two);
- (2) the language(s) to be used in the proceedings (Article 6 Vienna Investment Mediation Rules);
- (3) the substantive law applicable to the contractual relationship, the substantive law applicable to the mediation agreement, and the rules applicable to the proceedings (Article 1 paragraph 3 Vienna Investment Mediation Rules);
- (4) the admissibility of parallel proceedings (Article 10 Vienna Investment Mediation Rules);
- (5) the interruption of the statute of limitations or waiver to invoke the statute of limitations for a specific period of time.

² or a different period of time agreed upon in writing by the parties

³ see the optional supplementary agreements for arbitration clauses

ANNEX 2

MODEL CLAUSES FOR VIAC AS APPOINTING AUTHORITY AND VIAC AS ADMINISTERING AUTHORITY

MODEL CLAUSE FOR VIAC AS APPOINTING AUTHORITY

It is recommended that parties wishing to select VIAC as appointing authority pursuant to Annex 4 insert the following wording in their mediation / arbitration clause:

The Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber shall act as appointing authority in accordance with Annex 4 to the VIAC Rules of Investment Arbitration and Investment Mediation.

MODEL CLAUSE FOR VIAC AS ADMINISTERING AUTHORITY

It is recommended that parties wishing to select VIAC as administering authority pursuant to Annex 5 insert the following wording in their arbitration / mediation clause:

The Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber shall act as administering authority in accordance with Annex 5 to the VIAC Rules of Investment Arbitration and Investment Mediation.

ANNEX 3 SCHEDULE OF FEES¹

Registration Fee²

Amount in dispute in EUR		Rate in EUR
from	to	
	25,000	500
25,001	75,000	1,000
over 75,000		1,500

Administrative Fees³

Amount in dispute in EUR		Rate in EUR
from	to	
	25,000	500
25,001	75,000	1,000
75,001	100,000	1,500
100,001	200,000	3,250 + 1.875 % of amt. over 100,000
200,001	500,000	5,125 + 1.250 % of amt. over 200,000
500,001	1,000,000	9,125 + 0.875 % of amt. over 500,000
1,000,001	2,000,000	13,500 + 0.500 % of amt. over 1,000,000
2,000,001	15,000,000	18,500 + 0.150 % of amt. over 2,000,000
15,000,001	40,000,000	38,000 + 0.058 % of amt. over 15,000,000
over 40,000,000		52,500 + 0.045 % of amt. over 40,000,000 in total max. 75,000 (52,500 + 22,500)

¹ For an overview of the expected procedural costs for a VIAC arbitration with a particular amount in dispute see the cost calculators on the VIAC website (<https://www.viac.eu/en/cost-calculators>)

² See Article 10 Vienna Investment Arbitration Rules; Article 4 Vienna Investment Mediation Rules

³ See Article 44 paragraphs 2 and 4 Vienna Investment Arbitration Rules; Article 8 paragraph 5 Vienna Investment Mediation Rules

Fees for Sole Arbitrators⁴

Amount in dispute in EUR		Rate in EUR	
from	to		
	100,000	6 %, minimum fee 3,000	
100,001	200,000	6,000 +3.00% of amt. over	100,000
200,001	500,000	9,000 +3.10% of amt. over	200,000
500,001	1,000,000	18,300 +2.30% of amt. over	500,000
1,000,001	2,000,000	29,800 +1.10% of amt. over	1,000,000
2,000,001	5,000,000	40,800 +0.66 % of amt. over	2,000,000
5,000,001	10,000,000	60,600 +0.45% of amt. over	5,000,000
10,000,001	20,000,000	83,100 +0.21 % of amt. over	10,000,000
20,000,001	100,000,000	104,100 +0.088 % of amt. over	20,000,000
100,000,001	500,000,000	174,500 +0.031 % of amt. over	100,000,000
over 500,000,000		298,500 +0.01% of amt. over	500,000,000

⁴ See Article 44 paragraphs 2, 4, 8 and 11 Vienna Investment Arbitration Rules in particular

ANNEX 4

VIAC AS APPOINTING AUTHORITY

VIAC may be designated to act as appointing authority in ad hoc proceedings.

VIAC AS APPOINTING AUTHORITY

Article 1

(1) VIAC may be designated as appointing authority in accordance with this Annex 4 by contract, law, treaty, agreement of the parties to the dispute or by the Secretary-General of the Permanent Court of Arbitration at The Hague.

(2) VIAC may provide the following services as appointing authority:

- 2.1 appointment of arbitrators or other third-party neutrals;
- 2.2 appointment of substitute arbitrators and other third-party neutrals;
- 2.3 appointment of experts;
- 2.4 decision on challenges of arbitrators;
- 2.5 assistance in fixing the fees and expenses of arbitrators and other third-party neutrals, as well as review of such fees and expenses;
- 2.6 advisory comments regarding advances on costs.

(3) Unless the parties have agreed otherwise, when requested to appoint an arbitrator, VIAC will follow the procedure set out in Articles 16-18 Vienna Investment Arbitration Rules and, when requested to appoint another third party neutral, the procedure set out in Article 7 Vienna Investment Mediation Rules, respectively.

(4) When requested to decide a challenge of an arbitrator, and unless otherwise agreed by the parties, VIAC will follow the challenge procedure set out in Articles 20 et seqq. Vienna Investment Arbitration Rules.

REQUEST

Article 2

(1) A request shall be submitted to VIAC in accordance with Article 12 Vienna Investment Arbitration Rules and must be:

- 1.1 in writing in one of the languages of correspondence of VIAC (English or German);
- 1.2 dated;
- 1.3 signed by the requesting party/parties or its/their duly authorized representative(s). If the request is signed by a representative, it must enclose proof of the authorization, e.g. a power of attorney or a letter of engagement.

(2) A request shall include the following information:

- 2.1 a description of the requested type of appointment service as described in Article 1 paragraph 2;
- 2.2 a description of the nature of the dispute;
- 2.3 a copy of the statement of claim or other initial written submission, the answer to the statement of claim or any responses thereto from the other party/parties, as well as any further relevant submissions or correspondence by the parties;
- 2.4 the dispute resolution clause and the provision designating VIAC as appointing authority;
- 2.5 the full names, addresses, including electronic mail addresses, and other contact details of the parties and their representatives, and any comment on the parties' nationalities;
- 2.6 the name and nationality of any arbitrator / third-party neutral(s) / experts already appointed, if any, information on the method of appointment, and any declaration made by them;
- 2.7 language(s) of the proceedings.

COSTS

Article 3

(1) If VIAC is requested to act as appointing authority under this Annex, the requesting party/parties shall pay a non-refundable fee in

the amount of EUR 3,000 for each service requested. A request will be processed only after full payment of this fee.

(2) In exceptional circumstances, VIAC may deviate from the amounts set out in paragraph 1 of this Article.

DISCLAIMER

Article 4

The liability of the arbitrator, the other third party neutral, the tribunal secretary, the Secretary General, the Deputy Secretary General, the Board and its members, as well as the Austrian Federal Economic Chamber and its employees for any act or omission in relation to the proceedings is excluded, unless such act or omission constitutes willful misconduct or gross negligence.

ANNEX 5 VIAC AS ADMINISTERING AUTHORITY

VIAC may be designated to act as administering authority in ad hoc proceedings.

VIAC AS ADMINISTERING AUTHORITY

Article 1

(1) In arbitrations governed by the UNCITRAL Arbitration Rules or other ad hoc arbitrations or other ad hoc alternative dispute resolution proceedings, VIAC acts as administrative authority in accordance with this Annex 5 if the parties have agreed that the proceedings shall be administered by VIAC.

(2) VIAC may provide the following administrative services:

2.1 Support services, including

- i. maintenance of a case file of written communications and submissions;
- ii. facilitating communications, with the possibility to opt in for access to the VIAC Platform (“VIAC Portal”);
- iii. arrangements for meetings and hearings:
 - assisting in establishing the date, time, and place of meetings and hearings;
 - arranging meeting/hearing rooms at the premises of the Austrian Federal Economic Chamber, including technical equipment and logistical support;
 - organizing in-house luncheons and catering services;
 - assisting with further logistical organization, e.g. identifying and engaging court reporters or interpreters;
 - facilitating entry visas when required;
- iv. services with respect to the storage of files, including arbitral awards.

2.2 Administration of costs, including holding deposits from the parties as advances on costs of the proceedings and handling payments to arbitrators and services providers.

2.3 Services as appointing authority as described in Article 1 of Annex 4.

REQUEST

Article 2

(1) A request shall be submitted to VIAC in accordance with Article 12 paragraph 1 Vienna Investment Arbitration Rules and must be:

2.4 in writing in one of the languages of correspondence of VIAC (English or German);

2.5 dated;

2.6 signed by the requesting party/parties or its/their duly authorized representative(s). If the request is signed by a representative, it must enclose proof of the authorization, e.g. a power of attorney or a letter of engagement.

(2) The Secretary General may require additional information depending on the services requested.

COSTS

Article 3

(1) If VIAC is requested to act as administrative authority under Article 1 of this Annex 5, the requesting party/parties shall pay a registration fee net of any charges in the amount stipulated in Annex 3. The registration fee is non-refundable and shall not be deducted from the paying party’s advance on costs. A request will be processed only after full payment of the registration fee.

(2) Depending on the administrative services requested, the following administrative fees apply:

2.1 For full administrative services, VIAC charges its standard administrative fees as per Annex 3 depending on the amount in dispute. The amount in dispute shall be calculated based on the cost provisions of the Vienna Investment Arbitration Rules or Vienna Investment Mediation Rules, depending on the nature of dispute.

2.2 For selected administrative services, VIAC reduces its administrative fees accordingly.

2.3 In principle, VIAC’s services as administrative authority are split into three categories. For each category, a third of the standard administrative fees as per Annex 3 will be charged, depending on the amount in dispute:

- i. support services as described in Article 1 paragraph 2.1 of this Annex 5;

- ii. services as administrator for costs as described in Article 1 paragraph 2.2 of this Annex 5;
- iii. services as appointing authority as described in Article 1 paragraph 2 of Annex 4.

2.4 In any case, the minimum administrative fees are EUR 3,000.

(3) The advance on costs for the administrative fees must be paid in full before VIAC starts to provide the respective services.

(4) All advances on costs in an arbitration are subject to the advance on costs provision under the VIAC Rules of Investment Arbitration (Article 42), or when administrative services are requested in other alternative dispute resolution proceedings, the VIAC Rules of Investment Mediation (Article 8), respectively. All advances on costs may be drawn upon by VIAC at any stage during or after the proceedings to cover the costs incurred in such proceedings. Funds are disbursed on the order of the arbitral tribunal or, in case of other ad hoc alternative resolution proceedings the other third-party neutral, only.

(5) In exceptional circumstances, VIAC may deviate from the amounts set out in paragraph 2 of this Article.

DISCLAIMER

Article 4

The liability of the arbitrator, the other third party neutral, the tribunal secretary, the Secretary General, the Deputy Secretary General, the Board and its members, as well as the Austrian Federal Economic Chamber and its employees for any act or omission in relation to the proceedings is excluded, unless such act or omission constitutes willful misconduct or gross negligence.
