

# TABLE OF CONTENTS

List of Abbreviations .....	xx-xxviii
-----------------------------	-----------

## PREFACE

<b>PREFACE TO THE 2<sup>ND</sup> EDITION OF THE VIAC HANDBOOK ARBITRATION AND MEDIATION RULES</b> .....	<b>1</b>
The Vienna Rules and Vienna Mediation Rules 2018 .....	1
<b>PREFACE TO THE 1<sup>ST</sup> EDITION OF THE HANDBOOK VIENNA RULES</b> .....	<b>5</b>
The VIAC and the Vienna Rules.....	5
The Handbook .....	7
<b>PREFACE TO THE 1<sup>ST</sup> EDITION OF THE HANDBOOK VIENNA MEDIATION RULES</b> .....	<b>9</b>

## PART I RULES OF ARBITRATION

### GENERAL PROVISIONS

<b>Article 1</b> <b>COMPETENCE OF THE VIAC AND APPLICABLE VERSION OF THE VIENNA RULES</b> ( <i>Horvath   Fremuth-Wolf</i> ).....	<b>15</b>
1. Introduction; Purpose of the Provision.....	16
2. The Institution.....	16
3. Jurisdiction of the VIAC.....	17
3.1. General .....	17
3.2. Jurisdiction for Domestic (NEW!) and International Arbitration Proceedings .....	18
3.3. Transitional Provisions for Domestic Cases .....	19
4. The VIAC Rules of Arbitration – Applicable Version (Para 2) .....	20
5. Refusal to Administer Arbitration Proceedings (Para 3).....	21
<b>Article 2</b> <b>THE BOARD</b> ( <i>Baier   Heider</i> ).....	<b>22</b>
1. Introduction; Purpose of the Provision.....	23
1.1. Main Tasks of the Board .....	23
1.1.1. Decision on the Number of Arbitrators.....	23
1.1.2. Participation in the Constitution of the Arbitral Tribunal .....	23
1.1.3. Confirmation of Nominated Arbitrators.....	24
1.1.4. Decisions on Challenges and Removals of Arbitrators .....	24
1.1.5. Consolidation .....	24
1.1.6. Revocation of Appointed Arbitrators .....	24
1.2. Other Duties of the Board.....	25
1.2.1. Remission of Proceedings to the Arbitral Tribunal.....	25
1.2.2. International Advisory Board .....	25
1.2.3. Refusal to Administer Proceedings .....	25
1.2.4. Right of Proposal for Appointment of the Secretary General .....	25
1.2.5. Public Relations .....	25
2. Appointment and Term of Office of the Board Members (Para 1).....	25

3. The President and the Vice Presidents of the Board (Para 2).....	26
4. Independence and Impartiality of the Members of the Board (Para 3) .....	27
5. Authority to Act Independently of Instructions; Confidentiality and Duties of the Members of the Board (Para 4) .....	27
6. The Internal Rules of the Board (Para 5).....	29
<b>Article 3 THE INTERNATIONAL ADVISORY BOARD (Schwarzenbacher) .....</b>	<b>30</b>
1. Introduction; Purpose of the Provision.....	30
2. Composition; Appointment; Meetings of the International Advisory Board.....	30
2.1. Composition.....	30
2.2. Appointment.....	31
3.2. Meetings .....	31
3. Tasks of the International Advisory Board.....	31
<b>Article 4 SECRETARY GENERAL, DEPUTY SECRETARY GENERAL AND SECRETARIAT (Fremuth-Wolf   Vanas-Metzler) .....</b>	<b>32</b>
1. Introduction; Purpose of the Provision.....	33
2. Appointment (Para 1) .....	33
3. The Secretariat (Para 2) .....	33
3.1. Tasks of the Secretary General and the Secretariat.....	33
3.2. Duties of the Deputy Secretary General .....	35
4. Bias (Para 3) .....	35
5. Authority to Act Independently of Instructions; Confidentiality (Para 4) .....	35
6. Unavailability (Para 5).....	36
<b>Article 5 LANGUAGES OF CORRESPONDENCE (Fremuth-Wolf   Dobosz).....</b>	<b>37</b>
1. Introduction; Purpose of the Provision.....	37
2. Communication between the Parties and the Secretariat and the Board.....	37
2.1. German and English as Languages of Correspondence .....	37
2.2. Submission of the Statement of Claim.....	37
2.3. Other Submissions .....	38
3. Communication between the Arbitrators and the Secretariat and the Board .....	39
<b>Article 6 DEFINITIONS (Schwarzenbacher) .....</b>	<b>40</b>
1. Introduction; Purpose of the Provision.....	41
2. Party (Para 1.1) .....	41
3. Claimant (Para 1.2) .....	41
4. Respondent (Para 1.3) .....	41
5. Third Party (Para 1.4).....	41
6. Arbitral Tribunal (Para 1.5) .....	42
7. Arbitrator (Para 1.6).....	42
8. Co-Arbitrator (Para 1.7) .....	43
9. Arbitral Award (Para 1.8) .....	43
10. Secretary General (Para 1.9).....	45
11. Gender Provision (Para 2) .....	45

## COMMENCING THE ARBITRATION

<b>Article 7</b>	<b>STATEMENT OF CLAIM</b> ( <i>Rechberger   Hofstätter</i> )	<b>46</b>
	1. Introduction; Purpose of the Provision	47
	2. Commencement of the Arbitration (Para 1)	47
	2.1. Form of Submission of the Statement of Claim	47
	2.2. Consequences	48
	2.3. Information to Parties	49
	3. Requirements Regarding the Contents of the Statement of Claim (Para 2)	50
	4. Incomplete Statements of Claim (Para 3)	51
	4.1. Examination of the Statement of Claim	51
	4.2. Examination of Jurisdiction	52
	5. Service of the Statement of Claim (Para 4)	52
<b>Article 8</b>	<b>ANSWER TO THE STATEMENT OF CLAIM</b> ( <i>Pitkowitz   Dobosz</i> )	<b>54</b>
	1. Introduction; Purpose of the Provision	54
	2. Service of the Statement of Claim	55
	3. Time Limit for Answering the Statement of Claim and Form of Submission (Para 1)	55
	4. Minimum Contents of the Answer to the Statement of Claim (Para 2)	57
	5. Consequences of Missing, Defective or Late Submission of an Answer to the Statement of Claim	57
	6. Counterclaim; Representative's Power of Attorney	58
	7. Order to Remedy and Supplement	58
	8. Plea of Lack of Jurisdiction	58
<b>Article 9</b>	<b>COUNTERCLAIM</b> ( <i>Pitkowitz   Dobosz</i> )	<b>59</b>
	1. Introduction; Purpose of the Provision	59
	2. Submission; Advance on Costs; Requirements as to the Content; Order to Remedy or Supplement to the Respondent (Para 2)	60
	3. Return of the Counterclaim by the Arbitral Tribunal (Para 3)	61
	4. Statement of the Claimant (Para 4)	62
	5. Order to Remedy or Supplement to the Claimant	62
	6. Distinction between Set-Off Plea and Counterclaim	62
<b>Article 10</b>	<b>REGISTRATION FEE</b> ( <i>Fremuth-Wolf   Rogge</i> )	<b>64</b>
	1. Introduction; Purpose of the Provision	64
	2. Amount and Calculation of the Registration Fee	65
	3. Due Date; Consequences of Non-Payment	65
<b>Article 11</b>	<b>TRANSMISSION OF FILE</b> ( <i>Heider</i> )	<b>67</b>
	1. Introduction; Purpose of the Provision	67
	2. Practical Significance of Art 11	68
	3. Conclusion	68
<b>Article 12</b>	<b>SERVICE, TIME LIMITS AND DISPOSAL OF FILE</b> ( <i>Gantenberg   Kühn</i> )	<b>70</b>
	1. Introduction; Purpose of the Provision	72
	2. Form of Submitting the Statement of Claim	72
	3. Service	73
	3.1. General	73
	3.2. Form (Para 3)	74

3.3. Addressee (Para 4).....	76
3.4. Time of Service (Para 5) .....	77
3.5. Number of Copies (Para 1, 3).....	77
3.6. Multi-Party Proceedings (Para 6).....	77
4. Time Limits.....	78
4.1. General .....	78
4.2. Calculation of Time Limits (Para7) .....	78
4.2.1. General.....	78
4.2.2. Continuation.....	79
4.2.3. End of the Time Limit .....	79
4.3. Compliance with Time Limits (Para 8) .....	80
4.4. Consequences of Non-Compliance with Time Limits.....	80
5. File destruction .....	81
6. Excursus: Electronic File ( <i>Vanas-Metzler   Rogge</i> ) .....	82
6.1. Objective.....	82
6.2. Effect on the Service of Documents.....	82
6.2.1. Statement of Claim (and Request for Joinder by Statement of Claim) (Art 12 Para 1, Art 14 Para 3) .....	82
6.2.2. Answer to the Statement of Claim (Art 8), Counterclaim (Art 9), Extension of the Statement of Claim.....	83
6.2.3. Transmission of File (Art 11).....	83
6.2.4. Arbitral Award (Art 36 Para 5).....	83
6.2.5. Other Written Communications (Art 12 Para 2).....	84
6.3. Form and Address for Service in Electronic Form.....	84
6.4. Effect on the Calculation of Time Limits .....	84
<b>Article 13 REPRESENTATIVES (<i>Gantenberg   Kühn</i>) .....</b>	<b>85</b>
1. Introduction; Purpose of the Provision.....	85
2. Persons of Their Choice .....	86
3. Representation or Advice .....	86
4. Power of Attorney .....	87
5. Costs .....	88

## JOINDER OF THIRD PARTIES AND CONSOLIDATION

<b>Article 14 JOINDER OF THIRD PARTIES (<i>Oberhammer   Koller</i>) .....</b>	<b>89</b>
1. Introduction; Purpose of the Provision.....	90
2. Basic Principles of Third Party Joinders .....	92
2.1. Forms of Joinder; Procedural Status of the Third Party ("Manner of Joinder").....	92
2.2. Procedural Framework for Joinders.....	93
2.2.1. Requesting Party .....	93
2.2.2. Required Form and Content of the Request .....	93
2.2.3. Time Limits .....	94
2.3. Prerequisites for Joinders of Third Parties; Decision of the Arbitral Tribunal	94
3. Joinder of Third Parties in a Statement of Claim .....	97
3.1. General .....	97
3.2. Additional Form and Content Requirements.....	98

3.3. Joinder of a Third Party in a Statement of Claim; Constitution of the Arbitral Tribunal .....	98
3.4. Return of the Request for Joinder; New Constitution of the Arbitral Tribunal .....	99
<b>Article 15 CONSOLIDATION (Oberhammer   Koller) .....</b>	<b>103</b>
1. Introduction; Purpose of the Provision .....	103
2. Prerequisites for Consolidation .....	105
3. Decision by the Board .....	106
3.1. Hearing the Parties .....	106
3.2. Discretionary Decision by the Board .....	106
4. Legal Consequences of Consolidation .....	108

## ARBITRAL TRIBUNAL

<b>Article 16 GENERAL PROVISIONS (Riegler   Boras) .....</b>	<b>110</b>
1. Introduction; Purpose of the Provision .....	111
2. Requirement Profile of an Arbitrator .....	112
2.1. Legal Capacity .....	112
2.2. Party Autonomy .....	113
2.3. Declaration of Arbitrator's Acceptance of Office and Independence/Impartiality .....	113
2.3.1. Standards in International Arbitration .....	115
2.3.2. IBA Guidelines on Conflicts of Interest in International Arbitration .....	115
2.4. Availability .....	116
2.5. Qualification .....	116
2.6. Obligation to Maintain Secrecy; Other Duties of the Arbitrator .....	117
2.7. Nationality .....	118
3. Contractual Relationship; Arbitrator's Mandate .....	118
4. Consideration of Arbitrator Conduct in the Determination of Fees .....	121
5. Data Protection .....	121
5.1. Publication of Data .....	121
5.2. Data Protection Declaration .....	122
6. Excursus: Comments on Tribunal Secretary (Fischer   Wong) .....	123
6.1. Introduction .....	123
6.2. Appointment .....	123
6.3. Tasks .....	125
6.4. Costs .....	126
<b>Article 17 CONSTITUTION OF THE ARBITRAL TRIBUNAL (Riegler   Boras) .....</b>	<b>128</b>
1. Introduction; Purpose of the Provision .....	129
2. Party Autonomy .....	129
3. Number of Arbitrators .....	131
4. Appointment of the Arbitrators .....	132
4.1. Sole Arbitrator .....	132
4.2. Panel of Arbitrators .....	133
4.2.1. Co-Arbitrators .....	133
4.2.2. Chairperson of the Panel of Arbitrators .....	134
4.3. Appointment by the Board .....	135

5. Binding Effect.....	136
<b>Article 18 CONSTITUTION OF THE ARBITRAL TRIBUNAL IN MULTI-PARTY PROCEEDINGS (Riegler   Boras).....</b>	<b>137</b>
1. Introduction; Purpose of the Provision.....	137
2. Party Autonomy.....	138
3. Number of Arbitrators .....	138
4. Appointment of Arbitrators in Multi-Party Proceedings .....	139
4.1. General .....	139
4.2. Sole Arbitrator .....	139
4.3. Panel of Arbitrators .....	140
4.3.1. Co-Arbitrators.....	140
4.3.2. Chairperson of the Panel of Arbitrators .....	141
<b>Article 19 CONFIRMATION OF THE NOMINATION (Riegler   Petsche).....</b>	<b>142</b>
1. Introduction; Purpose of the Provision.....	142
2. Confirmation of the Nomination .....	143
2.1. Secretary General or Board .....	144
2.2. Confirmation by the Secretary General .....	145
2.3. Confirmation by the Board .....	146
3. Refusal of Confirmation .....	147
<b>Article 20 CHALLENGE OF ARBITRATORS (Horvath   Fischer) .....</b>	<b>148</b>
1. Introduction; Purpose of the Provision.....	148
2. Grounds for a Challenge (Para 1).....	149
2.1. Justifiable Doubts as to the Independence and Impartiality of an Arbitrator .....	149
2.2. Qualifications Agreed by the Parties.....	151
2.3. Challenge by the Nominating Party .....	151
3. The Challenging Motion (Para 2) .....	152
4. Challenge Procedure (Para 3) .....	153
5. Effects on the Proceedings (Para 4).....	153
<b>Article 21 PREMATURE TERMINATION OF THE ARBITRATOR'S MANDATE (Horvath   Fischer).....</b>	<b>155</b>
1. Introduction; Purpose of the Provision.....	155
2. Grounds for Premature Termination of the Arbitrator's Mandate (Para 1) .....	156
2.1. General Procedure.....	156
2.2. Agreement by the Parties (Para 1.1.1).....	156
2.3. Resignation of an Arbitrator (Para 1.1.2).....	157
2.4. Death of an Arbitrator (Para 1.1.3).....	157
2.5. Successful Challenge of an Arbitrator (Para 1.1.4) .....	157
3. Unilateral Request for an Arbitrator's Removal from his Office (Para 2) .....	157
4. Removal of an Arbitrator on the Board's Own Initiative (Para 2).....	158
5. Contesting Decisions Before a State Court .....	158
<b>Article 22 EFFECTS OF THE PREMATURE TERMINATION OF THE ARBITRATOR'S MANDATE (Horvath   Fischer).....</b>	<b>160</b>
1. Introduction; Purpose of the Provision.....	160
2. Replacement Proceedings (Para 1).....	160
2.1. General Procedure.....	160

2.2. Nomination of a New Arbitrator by the Parties or by the Remaining Arbitrators .....	160
2.3. Appointment of a New Arbitrator by the Board .....	161
3. Continuation of the Arbitration with the New Arbitrator (Para 2) .....	162
4. Costs arising out of the premature termination and replacement .....	162

## CHALLENGE OF EXPERTS

<b>Article 23 CHALLENGE OF EXPERTS</b> ( <i>Klötzel   Pörnbacher</i> ) .....	<b>163</b>
1. Introduction; Purpose of the Provision .....	163
2. Expert Evidence in Arbitration .....	164
3. Experts Appointed by the Arbitral Tribunal .....	164
3.1. Selection of Tribunal-Appointed Experts .....	164
3.2. Tribunal-Appointed Experts in Arbitration Proceedings .....	165
3.3. Challenge of Tribunal-Appointed Experts .....	167
4. Party-Nominated Experts .....	169

## JURISDICTION OF THE ARBITRAL TRIBUNAL

<b>Article 24 JURISDICTION OF THE ARBITRAL TRIBUNAL</b> ( <i>Pickl   Heider</i> ) .....	<b>171</b>
1. Introduction; Purpose of the Provision .....	171
2. Raising Objections to Jurisdiction (Para 1) .....	172
3. Decision of the Arbitral Tribunal on its Own Jurisdiction (Para 2) .....	173

## THE PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

<b>Article 25 PLACE OF ARBITRATION</b> ( <i>Kreindler   Plavec</i> ) .....	<b>175</b>
1. Introduction; Purpose of the Provision .....	175
2. Choice of the Place of Arbitration .....	176
3. Vienna as the Place of Arbitration .....	177
4. Consequences of the Agreed Place of Arbitration .....	178
4.1. The Law Applicable to the Arbitration Agreement .....	178
4.2. The Law Applicable to the Arbitration Proceedings .....	179
4.3. Assistance and Intervention by State Courts .....	181
4.3.1. Judicial Assistance, Section 602 ZPO .....	181
4.3.2. Interim or Protective Measures, Section 593 ZPO .....	182
4.3.3. Challenge of Arbitrators, Section 589 ZPO .....	182
4.3.4. Setting Aside the Arbitral Award, Section 611 ZPO .....	182
4.3.5. Enforcement of Arbitral Awards, Section 614 ZPO .....	183
5. Procedural Actions .....	183
<b>Article 26 LANGUAGE OF THE PROCEEDINGS</b> ( <i>Hahnkamper</i> ) .....	<b>184</b>
1. Introduction; Purpose of the Provision .....	184
2. Significance of the Language in the Course of the Proceedings .....	185
3. Agreement by the Parties .....	185
4. Criteria for the Choice of Language .....	186
5. Consequences .....	187
6. Several Languages of the Proceedings .....	187

<b>Article 27</b>	<b>APPLICABLE LAW, AMIABLE COMPOSITEUR</b> ( <i>Busse</i> ).....	<b>189</b>
	1. Introduction; Purpose of the Provision.....	189
	1.1. Purpose of the Provision.....	189
	1.2. Amendments to Previous Versions.....	190
	1.3. Scope of Application .....	191
	2. Choice of Law (Para 1) .....	192
	2.1. General .....	192
	2.2. Form of Choice of Law .....	193
	2.3. Restrictions on the Choice of Law.....	194
	3. Applicable Law Without Choice of Law (Para 2) .....	195
	4. Procedural Issues .....	196
	5. Determination of the Contents of the Applicable Law .....	196
	6. Decision According to Equity (Para 3).....	197
<b>Article 28</b>	<b>CONDUCT OF THE ARBITRATION</b> ( <i>Haugeneder   Netal</i> ) .....	<b>199</b>
	1. Introduction; Purpose of the Provision.....	199
	2. Fundamental Procedural Principles.....	200
	2.1. Primacy of the Agreement of the Parties .....	200
	2.2. Compliance with the Vienna Rules .....	201
	2.3. Discretion of the Arbitral Tribunal.....	202
	2.4. Fundamental Procedural Guarantees.....	203
	2.4.1. Fair Treatment of the Parties .....	203
	2.4.2. The Right to be Heard .....	204
	2.4.3. Limits to the Right to be Heard .....	204
	2.4.4. Consequences of Violations of Fair Treatment of the Parties and of the Right to be Heard.....	205
<b>Article 29</b>	<b>ESTABLISHING THE FACTS OF THE CASE</b> ( <i>Haugeneder   Netal</i> ) .....	<b>207</b>
	1. Establishing the Facts of the Case at the Arbitral Tribunal's Discretion (Para 1) .	207
	1.1. Introduction; Purpose of the Provision.....	207
	1.2. The Arbitral Tribunal's Discretion in Establishing the Facts of the Case .....	208
	1.2.1. Party, Witness and Expert Examination .....	208
	1.2.2. Documentary Evidence .....	209
	1.2.3. Limits to the Arbitral Tribunal's Discretion.....	210
	1.3. Costs .....	211
	2. Failure of a Party to Participate in the Arbitration (Para 2) .....	211
	2.1. Introduction; Purpose of the Provision.....	211
	2.2. Continuation of the Proceedings .....	212
	2.3. Observance of the Right to be Heard .....	212
	2.4. Arbitral Award.....	212
<b>Article 30</b>	<b>ORAL HEARING</b> ( <i>Hahnkamper</i> ).....	<b>214</b>
	1. Introduction; Purpose of the Provision.....	214
	2. Scope of the Oral Hearing.....	215
	3. Summons and Preparation .....	216
	4. No Oral Hearing .....	216
	5. Oral Hearing; Safeguarding the Right to be Heard; Ground for Setting Aside the Arbitral Award .....	217
	6. Oral Hearing Despite Waiver by the Parties .....	218
	7. Conduct of Oral Hearings; Minutes .....	218



8. Oral Hearings in Expedited Proceedings .....	219
9. Privacy, Confidentiality and Transparency.....	219
<b>Article 31 DUTY TO OBJECT</b> ( <i>Klötzel   Pörnbacher</i> ).....	<b>220</b>
1. Introduction; Purpose of the Provision.....	220
2. Scope of Application .....	220
3. Duty to Object; Failure to Object.....	222
<b>Article 32 CLOSURE OF THE PROCEEDINGS</b> ( <i>Schifferl   Wong</i> ) .....	<b>223</b>
1. Introduction; Purpose of the Provision.....	223
2. Closure of the Proceedings .....	223
3. Anticipated Date of the Arbitral Award .....	225
<b>Article 33 INTERIM AND CONSERVATORY MEASURES / SECURITY FOR COSTS</b> ( <i>Zeiler   Beisteiner</i> ) .....	<b>227</b>
1. Introduction; Purpose of the Provision.....	228
2. Types of Interim Measures .....	229
3. Prerequisites.....	230
4. The Right to be Heard .....	231
5. Security .....	231
6. Orders .....	231
7. Enforcement .....	232
8. Effects on Third Parties.....	232
9. Preservation for the Record.....	233
10. Interim Measures and State Courts .....	233
11. Security for Costs ( <i>Gabriel   Haugeneder   Pörnbacher</i> ).....	234
11.1. Introduction; Purpose of the Provision .....	234
11.2. Prerequisites .....	235
11.3. Consequences of Non-Compliance with an Order to Provide Security for Costs .....	237
12. Excursus: Third-Party Funding in Arbitration under the Vienna Rules – Selected Topics ( <i>Brekoulakis   Riegler   Kröll</i> ).....	239
12.1. Introduction .....	239
12.2. Definition of TPF – Distinction from Other Forms of TPF.....	240
12.3. Conflicts of Interest.....	241
12.3.1. Conclusion .....	245
12.4. Costs.....	246
12.4.1. Allocation of Costs.....	246
12.4.2. Security for Costs.....	251
12.4.3. Conclusion .....	253
<b>Article 34 MEANS OF TERMINATION OF THE PROCEEDINGS</b> ( <i>Schifferl   Wong</i> ).....	<b>254</b>
1. Introduction; Purpose of the Provision.....	255
2. Termination by the Rendering of an Award (Para 1) .....	255
3. Termination by Order of the Arbitral Tribunal (Para 2) .....	256
3.1. General .....	256
3.2. Withdrawal of the Statement of Claim .....	256
3.3. Party Agreement.....	257
3.4. Impossibility of Continuing the Proceedings .....	257
3.5. Failure to Provide Security for Costs.....	258

4. Termination by Order of the Secretary General .....	259
5. Termination of the Arbitrator's Mandate .....	260
<b>Article 35 DECISIONS OF THE ARBITRAL TRIBUNAL</b> ( <i>Schifferl   Wong</i> ) .....	<b>261</b>
1. Introduction; Purpose of the Provision.....	261
2. Decisions by Majority of Votes; Decisions of the Chairperson .....	261
3. Questions of Procedure .....	262
4. Confidentiality of Deliberations; Inspection of Files by the Parties.....	263
<b>Article 36 ARBITRAL AWARD</b> ( <i>Hauser</i> ) .....	<b>266</b>
1. Introduction; Purpose of the Provision.....	267
2. Formal Requirements .....	267
2.1. Written Form .....	267
2.2. Reasoning .....	268
2.3. Signature.....	269
2.4. Other Formal Requirements.....	271
2.5. The Austrian Supreme Court as the First and Only Authority in Setting Aside Proceedings.....	272
3. Effectiveness.....	272
3.1. Service.....	273
3.2. Electronic Submission .....	273
3.3. Confirmation of Enforceability.....	274
3.4. Compliance with the Terms of the Arbitral Award .....	275
<b>Article 37 AWARD ON AGREED TERMS AND RECORDED SETTLEMENT</b> ( <i>Schifferl   Wong</i> ) .....	<b>276</b>
1. Introduction; Purpose of the Provision.....	276
2. Rendering of an Arbitral Award on Agreed Terms.....	277
3. Recording of Settlement Reached .....	278
4. Is the Arbitral Tribunal Obligated to Record a Settlement or to Render an Award thereon?.....	279
5. Termination of Proceedings; Challenge of an Award .....	279
6. Excursus: Arb-Med, Med-Arb and Arb-Med-Arb ( <i>Grill</i> ) .....	281
<b>Article 38 DECISION ON COSTS</b> ( <i>Peters</i> ) .....	<b>287</b>
1. Introduction; Purpose of the Provision.....	287
2. General Remarks on the Decision on Costs .....	288
2.1. Relationship to Section 609 para 1 ZPO.....	288
2.2. Obligation to Issue a Decision on Costs? .....	289
2.3. Discretionary Determination of Costs? .....	289
3. Determination of Reimbursable Costs.....	291
3.1. Costs to be Determined by the Secretary General .....	291
3.2. Costs of the Parties .....	292
3.3. Other Expenses .....	293
4. Allocation of Costs Among the Parties.....	294
5. Form of the Decision on Costs .....	294
6. Time of the Decision as to Costs .....	295

<b>Article 39</b>	<b>CORRECTION, CLARIFICATION AND SUPPLEMENTATION OF THE ARBITRAL AWARD</b> ( <i>Schiffnerl   Wong</i> )	<b>296</b>
1.	Introduction; Purpose of the Provision	297
1.1.	Corrections of Arbitral Awards (Para 1.1 and Para 3)	298
1.2.	Clarifications of Arbitral Awards (Para 1.2)	298
1.3.	Supplementations of Arbitral Awards (Para 1.3 and Para 3)	299
2.	Determination of Costs (Para 2, Third and Fourth Sentence)	299
3.	Supplementation of the Arbitral Award (Para 4, First Sentence)	301
4.	Correction or Clarification in the Form of an Addendum (Para 4, Second Sentence)	301
<b>Article 40</b>	<b>REMISSION TO THE ARBITRAL TRIBUNAL</b> ( <i>Klötzel   Pörnbacher</i> )	<b>303</b>
1.	Introduction	303
2.	Scope of Application	304
3.	Remission by a State Court	305
4.	Proceedings before the Arbitral Tribunal	307
5.	Costs	308
<b>Article 41</b>	<b>PUBLICATION OF AWARDS</b> ( <i>Kreindler   Rogge</i> )	<b>309</b>
1.	Reasons for Publication of Arbitral Awards	309
2.	Requirements for the Publication of Arbitral Awards	310
3.	Extension of the Scope of Application of Art 41	312
4.	Practice of Publication of Arbitral Awards: Selected Arbitral Awards	313

## COSTS

<b>Article 42</b>	<b>ADVANCE ON COSTS</b> ( <i>Peters</i> )	<b>314</b>
1.	Introduction; Purpose of the Provision	315
2.	Determination by the VIAC's Secretary General	316
3.	Payment of Advances on Costs	317
4.	Subsequent Increase in the Advance on Costs	318
5.	Obligation to Pay the Advance on Costs	319
6.	Non-Payment of the Advance on Costs	320
6.1.	Default of the Respondent	320
6.2.	Default of the Claimant	320
6.3.	Default of Both Parties	321
7.	Reimbursement of the Amount Paid for the Other Party	322
7.1.	Basis for the Reimbursement Obligation	323
7.2.	Jurisdiction of the Arbitral Tribunal	324
7.3.	Form of the Decision	325
<b>Article 43</b>	<b>ADVANCE ON COSTS FOR ADDITIONAL PROCEDURAL COSTS</b> ( <i>Peters</i> )	<b>327</b>
1.	Introduction; Purpose of the Provision	327
2.	Cover of Costs for Planned Procedural Steps	328
3.	Allocation of Advances on Costs	329
4.	Consequences of Non-Payment of Additional Advances on Costs	330
5.	The Arbitrators as the Parties' Representatives	330

<b>Article 44</b>	<b>COMPOSITION AND CALCULATION OF THE PROCEDURAL COSTS</b>	<b>331</b>
	<i>(Fremuth-Wolf   Vanas-Metzler)</i>	
1.	Introduction; Purpose of the Provision	333
2.	Costs that are Determined by the Arbitral Institution (Para 1.1)	334
2.1.	Administrative Fees of the VIAC	334
2.1.1.	Objective	334
2.1.2.	Amount and Calculation	334
2.2.	Arbitrators' Fees	335
2.2.1.	Dependence on Amount in Dispute	335
2.2.2.	Value Added Tax Applicable to Arbitrator's Fees (Art 44 Para 12)	336
2.2.3.	Reasonable Expenses	337
2.3.	Other Expenses	338
3.	The Costs of the Parties (Para 1.2)	338
4.	Other Expenses (Para 1.3)	339
5.	Calculation and Determination of Costs	339
5.1.	Responsibilities	339
5.2.	Basis of Calculation	340
5.2.1.	Amount in Dispute and its Increase or Reduction before or after Transmission of the File	340
5.2.2.	Correction of the Amount in Dispute by the Secretary General	340
5.2.3.	Separate Calculation and no Aggregation of Amounts in Dispute for Statement of Claim, Counterclaim and Requests for Joinder with a Statement of Claim (Art 44 Para 5)	341
5.2.4.	Special Case Set-Off Claims (Art 44 Para 6)	341
5.3.	Determination of Amounts	342
5.3.1.	In General	342
5.3.2.	Multiparty Surcharge for Arbitrators' Fees and Administrative Fees (Art 44 Para 4)	342
5.3.3.	Complexity and Efficiency Surcharge on Arbitrators' Fees (Art 44 Para 7)	342
5.3.4.	Reduction of Arbitrators' Fees, in particular for Inefficient Conduct of Proceedings (Art 44 Para 7)	343
5.3.5.	Reduction of Arbitrators' Fees in Case of Premature Termination of Proceedings (Art 44 Para 10 First Sentence)	343
5.3.6.	Reduction of Arbitrators' Fees in Case of Premature Termination of Arbitrator's Mandate (Art 44 Para 10 First Sentence)	344
5.3.7.	Reduction of Arbitrators' Fees in Parallel and Subsequent Proceedings (Art 44 Para 10 Second Sentence)	345
5.3.8.	Deduction of Administrative Fees in Parallel and Subsequent Proceedings (Art 44 Para 11)	345

## MISCELLANEOUS PROVISIONS

<b>Article 45</b>	<b>EXPEDITED PROCEEDINGS</b> <i>(Haugeneder   Netal)</i>	<b>346</b>
1.	Introduction; Purpose of the Provision	347
2.	Scope of Application of the Provisions on Expedited Proceedings	348
2.1.	Opt-in Requirement	348
2.2.	Application of the General Provisions on Proceedings under the Vienna Rules	349

3. Commencement of Expedited Proceedings; Constitution of the Arbitral Tribunal.....	350
3.1. Advances on Costs .....	350
3.2. Counterclaims and Set-off Claims.....	350
3.3. Constitution of the Arbitral Tribunal.....	350
4. Conduct of the Arbitration.....	351
4.1. Time Limit for the Termination of the Proceedings.....	351
4.2. Measures to Expedite the Proceedings .....	352
<b>Article 46 DISCLAIMER (Steindl) .....</b>	<b>354</b>
1. Introduction; Purpose of the Provision.....	354
2. Scope of Limitation of Liability; Practical Tips.....	356
2.1. Persons Subject to Limitation of Liability.....	356
2.2. Individual Expansion of Limitation of Liability .....	356
2.3. Permissibility of Limitation of Liability.....	357
2.4. Ways to Prevent Damage and Liability .....	357
3. Liability of the Arbitrators.....	358
3.1. General Remarks on Liability .....	358
3.2. Contractual and Tort Liability .....	359
4. Liability of the Arbitral Institution.....	361
4.1. General Remarks on Liability .....	361
4.2. The Arbitral Institution's Role .....	362
4.3. Contractual and Tort Liability .....	362
4.3.1. Parties to the Arbitration and Arbitral Institution.....	362
4.3.2. Arbitrators and Arbitral Institution .....	363
<b>Article 47 TRANSITIONAL PROVISION (Steindl) .....</b>	<b>366</b>
1. Introduction; Purpose of the Provision.....	366
2. Interpretation of the Transitional Provision .....	367
2.1. Significance of Entry Into Force of the Vienna Rules 2018 in Conjunction with Art 1 para 2 Vienna Rules .....	367
2.2. Choosing Previous Editions of the Vienna Rules.....	368
2.3. The Party's Will Suggests Application of the Most Recent Version of Arbitration Rules .....	368
3. Transitional Provision and Schedule of Fees.....	370

## PART II RULES OF MEDIATION

<b>Article 1</b>	<b>COMPETENCE OF THE VIAC AND APPLICABLE VERSION OF THE VIENNA MEDIATION RULES</b> ( <i>Fremuth-Wolf   Rogge</i> ) .....	<b>373</b>
	1. Introduction; Purpose of the Provision.....	374
	2. Jurisdiction of VIAC (Para 1).....	375
	3. The VIAC Mediation Rules – Applicable Version (Para 2) .....	375
	4. Party Autonomy (Para 3) .....	376
	5. Refusal to Administer Proceedings (Para 4).....	377
	6. Application of Vienna Rules by Analogy (Para 5).....	378
	7. Special Features of Domestic Cases.....	379
	8. New Developments for International Cases .....	380
<b>Article 2</b>	<b>DEFINITIONS</b> ( <i>Huber-Starlinger   Baier</i> ).....	<b>381</b>
	1. Introduction; Purpose of the Provision.....	381
	2. Proceedings (Para 1.1) .....	382
	3. Third-Party Neutral (Para 1.2).....	383
	4. Party (Para 1.3) .....	383
	5. Secretary General (Para 1.4).....	384
	6. Gender Definition (Para 2).....	384
	7. Reference to "Article" (Para 3) .....	385
<b>Article 3</b>	<b>COMMENCING THE PROCEEDINGS</b> ( <i>Tunkel   Weichselbaum-Gharibo</i> ).....	<b>387</b>
	1. Introduction; Purpose of the Provision.....	387
	2. Prerequisites to Commence Proceedings .....	388
	2.1. Mediation Agreement.....	389
	2.1.1. Form .....	389
	2.1.2. Content.....	389
	2.2. Possible Scenarios.....	390
	2.2.1. A Mediation Agreement has been Concluded .....	390
	2.2.2. No Mediation Agreement has been Concluded .....	390
	2.2.3. Mediation Agreement without Reference to VIAC .....	391
	2.2.4. Joint Request to Commence Proceedings .....	392
	3. Effect of the Commencement of Proceedings .....	392
	3.1. Suspension (or Interruption) of Limitation Periods .....	392
	3.2. Parallel Proceedings.....	393
	4. Form of the Request .....	394
	4.1. Language of Correspondence with VIAC.....	394
	4.2. Hardcopy or Electronic Form .....	395
	4.3. Exhibits.....	395
	5. Content of the Request.....	395
	5.1. Minimum Content.....	396
	5.1.1. Contact Details of the Parties .....	396
	5.1.2. Neutral Description of the Facts and the Dispute .....	396
	5.1.3. Amount in Dispute .....	397
	5.1.4. Nomination of a Mediator.....	397
	5.1.5. Number of Mediators and Language of the Proceedings.....	398
	5.1.6. Proposals in Case no Mediation Agreement Exists .....	399
	5.2. Recommended Content.....	399

---

5.2.1. Type of Proceedings .....	399
5.2.2. Persons Involved in the Dispute / Proceedings .....	400
5.2.3. Timeframe / Time Aspects .....	400
5.2.4. Pending Proceedings .....	400
5.3. Opportunity to Remedy Formal Defects .....	400
6. Service of the Request on the Other Party (or Parties) .....	401
6.1. Service on the Other Party (or Parties) through VIAC .....	401
6.2. Invitation to the Other Party (or Parties) to Submit Comments .....	402
6.3. Failure of the Other Party (or Parties) to Submit Comments .....	402
<b>Article 4 REGISTRATION FEE</b> ( <i>Fremuth-Wolf   Rogge</i> ) .....	<b>403</b>
1. Introduction; Purpose of the Provision .....	403
2. Amount and Calculation of the Registration Fee (Paras 1 and 2) .....	404
3. Due Date; Consequences of Non-Payment (Paras 1 and 5) .....	404
3.1. Due Date if a Mediation Agreement Exists .....	404
3.2. Due Date if a Mediation Agreement Does not Exist .....	405
3.3. Extension of Time and Non-Payment .....	405
4. Deduction in Subsequent Proceedings (Para 4) .....	405
<b>Article 5 PLACE OF THE SESSIONS</b> ( <i>Pitkowitz   Rogge</i> ) .....	<b>407</b>
1. Introduction; Purpose of the Provision .....	407
2. Determining the Place of Meetings and Sessions .....	407
3. Determining the Place of Mediation? .....	408
4. Place of Subsequent Arbitral Proceedings .....	409
<b>Article 6 LANGUAGE OF THE PROCEEDINGS</b> ( <i>Tunkel   Weichselbaum-Gharibo</i> ) .....	<b>410</b>
1. Introduction; Purpose of the Provision .....	410
2. Criteria for the Choice of Language .....	410
3. Documents and Translations During the Mediation Proceedings .....	411
4. Language Proficiency and Intercultural Understanding of the Mediator .....	412
5. Language Proficiency of the Parties .....	413
<b>Article 7 APPOINTMENT OF THE MEDIATOR</b> ( <i>Fremuth-Wolf   Mattl</i> ) .....	<b>415</b>
1. Introduction; Purpose of the Provision .....	416
2. Nomination of the Mediator by the Parties (Para 1) .....	416
3. Appointment of the Mediator by the Board (Para 2) .....	417
4. Declarations of the Mediator (Para 3) .....	418
4.1. Independence, Impartiality, and Parties' Agreement .....	418
4.2. Comments by the Parties .....	419
5. Confirmation of the Mediator (Para 4) .....	419
6. Qualification .....	420
7. Rejecting the Confirmation and Exchange of the Mediator (Para 5) .....	420
8. Mediator's Contract .....	422
<b>Article 8 ADVANCE ON COSTS AND COSTS</b> ( <i>Fremuth-Wolf   Rogge</i> ) .....	<b>425</b>
1. Introduction; Purpose of the Provision .....	426
2. The Determination of the Advance on Costs and the Stages of its Deposit .....	427
2.1. The Preliminary Part of the Advance on Costs (Para 1) .....	427
2.2. Increase of the Advance on Costs (Para 3) .....	427
2.3. Final Determination of Costs and Reimbursement .....	428
2.4. Obligation to Pay the Advance on Costs (Para 2) .....	428

3. The Categories of the Procedural Costs and their Calculation .....	428
3.1. The Administrative Fees (Para 5) .....	428
3.2. The Mediator’s Fees including VAT, if any (Para 6).....	429
3.3. Expenses .....	430
3.4. Other Costs of the Parties .....	431
4. Allocation of Costs .....	431
5. Non-Payment of the Advance on Costs and its Consequences .....	431
6. Parallel and Subsequent Proceedings.....	432
6.1. The Calculation of the Administrative Fees in Parallel and Subsequent Proceedings (Para 8) .....	432
6.2. The Calculation of the Arbitrator’s Fees in Parallel and Subsequent Proceedings .....	432
6.2.1. Arbitral Award on Agreed Terms.....	433
6.2.2. Shortened Arbitral Proceedings with Reduced Procedural Efforts .....	433
6.2.3. Early Termination of Arbitral Proceedings due to a Successful Mediation .....	433
6.3. The Use of Deposited Advances on Costs in Parallel Proceedings.....	434
<b>Article 9 CONDUCT OF THE PROCEEDINGS (Grill) .....</b>	<b>435</b>
1. Introduction; Purpose of the Provision.....	436
2. Transmission of the File to the Mediator (Para 1) .....	436
3. The Role of the Mediator in the Proceedings (Para 2).....	437
4. The Role of the Parties in the Proceedings (Paras 3 and 4) .....	438
4.1. Conducting the Proceedings .....	438
4.2. Mediation Team.....	439
4.3. Authorized Persons.....	439
4.4. Conduct of the Parties during the Proceedings .....	440
5. Attendance at Sessions with the Mediator (Para 5) .....	440
6. Confidential Private Meetings with the Mediator (Para 6).....	441
<b>Article 10 PARALLEL PROCEEDINGS (Frauenberger-Pfeiler) .....</b>	<b>444</b>
1. Introduction; Purpose of the Provision.....	444
2. Party Autonomy.....	445
3. Suspension of Statute of Limitations .....	445
4. Relationship between Proceedings under the Mediation Rules and Arbitral Proceedings .....	446
4.1. General .....	446
4.2. Arb-Med(-Arb) .....	446
4.2.1. The Structure.....	446
4.2.2. The Arbitrator as Mediator .....	448
4.3. Med-Arb and Possibilities of Enforcing the Result of a Mediation .....	449
4.3.1. Cases and Structure.....	449
4.3.2. The Mediator as Arbitrator .....	450
4.4. Combination of Mediation Proceedings / Dispute Resolution Techniques ..	451



<b>Article 11</b>	<b>TERMINATION OF THE PROCEEDINGS</b> ( <i>Huber-Starlinger   Baier</i> ) .....	<b>452</b>
1.	Introduction; Purpose of the Provision.....	453
2.	Formal Termination of the Proceedings (Para 1).....	453
3.	Circumstances of Termination (Para 1).....	453
3.1.	Agreement of the Parties/Mediation Settlement (Para 1.1) .....	454
3.2.	A Party's Wish not to Continue the Proceedings (Para 1.2).....	454
3.3.	Dispute Cannot be Resolved in the Opinion of the Mediator (Para 1.3) .....	455
3.4.	Notification by the Mediator that the Proceedings are Terminated (Para 1.4).....	456
3.5.	Impossibility to Appoint a Mediator and Failure to Comply with a Payment Order (Para 1.5) .....	456
4.	Termination of the Proceedings in Part (Para 2).....	457
5.	Information of the Secretary General by the Mediator (Para 3) .....	457
<b>Article 12</b>	<b>CONFIDENTIALITY, ADMISSIBILITY OF EVIDENCE AND SUBSEQUENT REPRESENTATION</b> ( <i>Frauenberger-Pfeiler</i> ) .....	<b>458</b>
1.	Introduction; Purpose of the Provision.....	459
2.	Confidentiality .....	460
2.1.	Group of Persons Who are Bound to Maintain Confidentiality .....	460
2.2.	Contents of the Confidentiality Agreement.....	460
2.3.	Period Covered .....	460
2.4.	Scope of Protection .....	461
2.5.	Permissible Disclosure .....	462
3.	Inadmissibility of Evidence.....	463
3.1.	Purpose and Implementation .....	463
3.2.	European Standard and National Law .....	463
3.3.	Recorded Facts and Evidence .....	464
3.4.	Exemptions from the Concept of Inadmissible Evidence.....	465
4.	Prohibition to Give Legal Advice and Represent Parties - but no Prohibition to Decide.....	466
4.1.	Intended Purpose .....	466
4.2.	The Mediator as Arbitrator.....	467
4.2.1.	Admissibility .....	467
4.2.2.	Limitations of Professional Laws or Regulations .....	467
4.2.3.	Information of the Parties .....	468
4.2.4.	Statement of the Parties .....	470
4.3.	The Mediator as Arbitrator in an Arbitral Tribunal.....	471
4.4.	The Arbitrator as Mediator.....	471
<b>Article 13</b>	<b>DISCLAIMER</b> ( <i>Grill</i> ).....	<b>472</b>
1.	Introduction; Purpose of the Provision.....	472
2.	Scope of Limitation of Liability.....	473
2.1.	Persons Subject to the Limitation of Liability .....	473
2.2.	Permissibility of Limitations of Liability .....	473
2.3.	Prevention of Liability and Damage .....	474
3.	Liability of the Mediator .....	474
3.1.	General Remarks on Liability .....	474
3.2.	Contractual Liability of Mediators .....	474
4.	Liability of the Institution.....	476

4.1. General Remarks on Liability .....	476
4.2. The Institution's Role .....	476
4.3. Contractual Liability of the Institution .....	476
4.3.1. Contractual Liability vis-à-vis the Parties.....	476
4.3.2. Contractual Liability vis-à-vis the Mediator.....	477
<b>Article 14 TRANSITIONAL PROVISION</b> ( <i>Fremuth-Wolf   Rogge</i> ) .....	<b>478</b>
1. Introduction; Purpose of the Provision.....	478
2. Entering Into Force and Application of the Vienna Mediation Rules.....	479
3. Transitional Provision .....	479

## PART III ANNEXES TO THE RULES OF ARBITRATION AND THE RULES OF MEDIATION

<b>Annex 1 MODEL CLAUSES</b> ( <i>Fremuth Wolf   Grill</i> ) .....	<b>483</b>
1. Introduction .....	485
2. Model Arbitration Clause.....	485
3. Optional Regulations .....	487
3.1. Number of Arbitrators .....	487
3.2. Choice of Law .....	487
3.3. Language of the Proceedings.....	489
3.4. Expedited Procedure .....	490
3.5. Choice of the Place of Arbitration.....	490
3.6. Confidentiality .....	491
3.7. Data Protection.....	491
4. Miscellaneous .....	492
5. Model Mediation Clauses .....	493
5.1. The VIAC Model Mediation Clauses.....	493
5.1.1. Optional Mediation .....	494
5.1.2. Obligation to Refer Disputes to Mediation followed by Arbitration ...	494
5.1.3. Obligation to Refer a Present Dispute to Mediation .....	495
5.1.4. Model Clause for Arb-Med-Arb Proceedings .....	496
5.2. Optional Supplementary Agreements .....	496
5.2.1. Number of Mediators or Other Third Party Neutrals.....	496
5.2.2. Language(s) to be Used in the Proceedings .....	497
5.2.3. Substantive Law Applicable to the Contractual Relationship and to the Mediation Agreement and the Rules Applicable to the Proceedings.....	497
5.2.4. Admissibility of Parallel Proceedings.....	498
5.2.5. The Interruption of the Statute of Limitations or Waiver to Invoke the Statute of Limitations for a Specific Period of Time .....	498
<b>Annex 2 INTERNAL RULES OF THE BOARD</b> ( <i>Baier   Heider</i> ) .....	<b>500</b>
1. Introduction; Purpose of the Provision.....	501
2. The Board's Meetings (Para 1).....	501
3. Quorum of the Board (Para 2) .....	502
4. Quorum for Decisions (Para 3).....	502
5. Representation of the President (Para 4) .....	503

---

6. Safeguarding the Board Members' Independence and Impartiality (Para 5) .....	503
7. Resolutions by Correspondence (Para 6) .....	503
8. Reasons for Board Decisions (Para 7) .....	504
<b>Annex 3 SCHEDULE OF FEES (<i>Fremuth-Wolf   Rogge</i>) .....</b>	<b>506</b>
1. Adjustment of the Schedule of Fees .....	507
2. Scope of the Schedule of Fees .....	507
3. Binding Nature of the Schedule of Fees .....	508
<b>Annex 4 VIAC AS APPOINTING AUTHORITY (<i>Fremuth-Wolf   Vanas-Metzler</i>) .....</b>	<b>509</b>
1. Introduction; Purpose of the Provision .....	509
2. Amount of the Fee .....	510
3. Request Procedure .....	511
4. VIAC-Services in Ad Hoc Dispute Resolution Proceedings .....	511
5. Excursus: Requests Pursuant to Art IV Para 5 and 6 of the European Convention of 1961 .....	512
<b>About the Authors .....</b>	<b>517</b>
<b>Bibliography .....</b>	<b>543</b>
For Part I: Rules of Arbitration .....	543
For Part II: Rules of Mediation .....	562
<b>Index .....</b>	<b>565</b>
For Part I: Rules of Arbitration .....	565
For Part II: Rules of Mediation .....	583