May 2018

NEW ARBITRATION RULES IN THE CEE REGION

VIENNA RULES 2018 (IN FORCE AS FROM 1 JANUARY 2018)

DOMESTIC CASES

A major revision is the competence of VIAC to administer domestic cases (from 1 July 2018 onwards) even if all parties have their seat or domicile in Austria. The competence to administer international cases remains unchanged.

ELECTRONIC DATABASE

The installment of an electronic database will enable – apart from filing the statement of claim – the electronic administration of arbitrations (in other words: paper files are no longer necessary).

SECURITY FOR COSTS

The inclusion of a new provision on security for costs is a significant step forward in comparison to other international arbitration institutions. The respondent may request the arbitral tribunal to order the claimant to provide a security for costs if the respondent can demonstrate that the recoverability of a possible cost claim is at risk. In the event the claimant fails to comply with the tribunal's order for the security for costs, the tribunal may suspend or even terminate the arbitration proceedings. This new provision might become relevant in particular where third party funders are involved.

COSTS OF THE PROCEEDINGS

The administrative fees of the institution and the arbitrators' fees have been decreased for lower amounts in dispute and moderately increased at the higher end of the spectrum. When the tribunal allocates the costs between the parties, and VIAC determines the costs of the proceedings, they should particularly take into account the efficiency of the proceedings. Under appropriate circumstances, VIAC may decrease or increase the fees of the arbitrators by 40% in relation to the ordinary VIAC fee schedule.

MEDIATION

Under the revised Mediation Rules 2018, parties have the option to conduct stand-alone mediation proceedings or a combination of arbitration and mediation, so-called (Arb-)Med-Arb proceedings. In the latter case, the fees for arbitration may be credited to those of mediation and vice versa. However, only an arbitrator may render an enforceable arbitral award. Thus, if parties to mediation have agreed on a settlement, they should consider initiating arbitration proceedings in order to have the settlement agreement recorded in the form of an arbitral award on agreed terms.

CONCLUSION

Apart from the above amendments and the redrafting of particular provisions for linguistic purposes, the Vienna Rules 2018 remain, as to their substance, unchanged. Thereby, the Vienna Rules keep their essential character for which they are known and appreciated in the CEE/SEE Region: a clear and slim set of arbitration rules and a reasonable cost regime that meets the needs of arbitration users.

DIS ARBITRATION RULES 2018 (IN FORCE AS FROM 1 MARCH 2018)

THE NEW ROLE OF DIS

The DIS Arbitration Rules 2018 strengthen the involvement and the competences of the institution and establish a new body, namely the Arbitration Council. It decides inter alia on

- the number of arbitrators, if the parties have not agreed thereon;
- any challenge of arbitrators;
- any request of a party to reconsider the amount in dispute determined by the arbitral tribunal;
- fixing and possible reduction of the arbitrators' fees if the arbitration has been terminated prior to the making of a final award or by an award by consent.

TIME AND COST EFFICIENCY

The DIS Arbitration Rules 2018 provide for a general principle pursuant to which the arbitral tribunal and the parties shall conduct the proceedings in a time and cost efficient manner, which is reflected, inter alia, by the following provisions.

- The deadlines for nominating a co-arbitrator and for selecting the president have been shortened from 30 to 21 days. If these deadlines are not complied with, the DIS Appointing Committee selects and appoints the co-arbitrator(s) and/or the president.
- The deadline to file an answer to the request for arbitration already commences with receipt of the request for arbitration and lasts 45 days; this deadline may be extended for up to an additional 30 days (and only under exceptional circumstances for a longer period). Thus, the filing of the answer no longer depends on the constitution of the arbitral tribunal.
- It is mandatory to hold a case management conference as soon as possible (in principle within 21 days) after the constitution of the arbitral tribunal where the arbitral tribunal shall discuss the procedural timetable and whether measures such as those on Expedited Proceedings (Annex 4) should be applied.

- In particular, the arbitral tribunal shall also discuss with the parties the possibility of using mediation or any other method of amicable dispute resolution and whether the parties wish to obtain a preliminary non-binding assessment of factual or legal issues from the tribunal.
- The arbitral tribunal shall send the final award to DIS (which reviews the award from a formal perspective and may suggest non-mandatory modifications) within three months after the last hearing or the last authorized submission. In case this deadline is not met, the fees of one or more arbitrators may be reduced taking into consideration the circumstances of the case.

NEW PROCEDURAL PROVISIONS ON MULTI-CONTRACT AND MULTI-PARTY ARBITRATIONS

- Claims arising out of or in connection with multiple contracts may be decided in a single arbitration if all parties agree.
- Claims between more than two parties may be decided in a single arbitration provided that there is an arbitration agreement that binds all of the parties to have their claims decided in a single arbitration or if all of the parties have so agreed in a different manner.
- Prior to the appointment of any arbitrator, a party may submit a request for arbitration to DIS in order to join an additional party after the arbitration has started. In making its decision, the tribunal shall apply the provisions on multi-party arbitration and, when claims are made under more than one contract, also the provisions on multi-contract arbitration.
- Upon the request of one party and if all parties agree, DIS may consolidate several arbitration proceedings into one single arbitration proceeding.

INTERIM MEASURES

Besides minor amendments as to the material and procedural requirements for interim relief, the new provision allows that an arbitral tribunal refrains from hearing the other party if this would risk frustrating the purpose of the measure. In such a case, the arbitral tribunal has to notify the other party of the request no later than when ordering the measure and shall promptly grant the other party a right to be heard. Thereafter, the arbitral tribunal has to confirm, amend, suspend or revoke the measure.

Stefan Riegler was a member of VIAC and DIS ("Konsolidierungsausschuss") workings groups for the revision of their respective rules. Valentina Wong was a member of the working group of VIAC.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna almost 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

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