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## Austria

### An Introduction to Dispute Resolution: Arbitration

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#### Overview

Austria is an utmost arbitration-friendly jurisdiction and enjoys a pristine reputation as one of the world's leading seats for arbitration. It is seen as neutral ground for the resolution of disputes with a high degree of legal certainty as well as clear and developed arbitration legislation and jurisprudence.

As a hub for arbitration in central and eastern Europe, Austria is further home to the Vienna International Arbitral Centre (VIAC), a well-established arbitration institution. Austria's important role in arbitration has further been confirmed by the fact that the China International Economic and Trade Arbitration Commission (CIETAC) has chosen Vienna as the seat of the CIETAC European Arbitration Centre.

Being a contracting state to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the "New York Convention", Austrian courts further regularly decide on the recognition and enforcement of foreign arbitral awards in Austria.

#### Arbitration Legislation

Austrian arbitration legislation is mainly based on the UNCITRAL Model Law 1985 and directly incorporated into the Austrian Code on Civil Procedure (ACCP). As *lex arbitri* these provisions of Chapter 4 ACCP (sections 577-618) govern all arbitrations seated in Austria. Two major reforms (2006 and 2013) helped to further develop Austrian arbitration legislation to facilitate a more modern and party-driven approach to arbitration proceedings.

Under Austrian law, the parties to an arbitration are largely free to shape the proceedings after their needs and are bound only by a limited number of mandatory provisions. Those provisions which are not open to party discretion mainly aim at guaranteeing fair treatment of the parties and ensure due process.

#### Arbitrability and Arbitration Agreements

Austrian law provides that any claim involving an economic interest (*vermögensrechtlicher Anspruch*) may be subject to an arbitration agreement. Claims without an economic interest may further be brought to arbitration if the parties can conclude a settlement on the matter. In contrast to the broad scope of claims open for arbitration, section 582 (2) ACCP expressly

excludes arbitrability for all matters concerning family law and contracts falling under the scope of the Austrian Tenancy Act (*Mietrechtsgesetz*).

An arbitration agreement must either be signed by the parties or part of exchanged written communications between the parties to be valid (emails are expressly included). The parties are free to conclude an arbitration agreement as a standalone agreement or also incorporate it into a contract.

### **Austrian Court System and Arbitration – Austrian Supreme Court**

The Austrian Supreme Court is the court of highest significance in arbitration-related matters in Austria. A reform of the Austrian arbitration laws in 2013 made the Austrian Supreme Court the main, and in many cases, sole instance in most arbitration-related matters in order to facilitate swifter proceedings. Previously, a total of three instances were foreseen by law.

Proceedings such as the challenging of an arbitrator or the setting aside of an arbitral award fall under the sole jurisdiction of the Austrian Supreme Court. One out of the Supreme Court's 18 expert committees is solely dedicated to arbitration matters.

### **Interim Measures**

Both an arbitral tribunal (or sole arbitrator) as well as national courts are competent to issue interim measures. While the parties may by mutual agreement not grant an arbitral tribunal the power to issue interim measures, the jurisdiction of Austrian courts cannot be excluded by party agreement in this regard.

Austrian courts are responsible for the enforcement of interim measures whether issued by an arbitral tribunal or an Austrian court. State courts also enjoy discretion when an arbitral tribunal has ordered security measures that are foreign to the measures available to a national court within the Austrian Enforcement Act (*Exekutionsordnung*). In such a case, the national court will hear the defendant and order the most suitable interim relief measure available under Austrian law.

### **Recognition and enforcement of Awards**

Arbitral awards rendered by a tribunal or sole arbitrator seated in Vienna, so called "*domestic awards*," carry the same significance as a final Austrian court decision and are enforceable without the need to take additional steps.

In contrast, awards rendered by an arbitral tribunal not seated in Austria, "*foreign awards*," must first be formally recognised by the competent Austrian court. One of the main advantages of such proceedings in Austria is that an application for the recognition of a foreign award may be combined with the application for enforcement measures. The debtor under the foreign award will therefore not be able to shift his assets and prevent successful enforcement even though the decision on the recognition of the award is still pending or not yet fully binding. The proceedings are in principle governed by the Austrian Enforcement Act, save where relevant international law provides differing provisions. As Austria has been a contracting state to the New York Convention since 1961, this convention plays a substantial

role in most recognition proceedings. In addition, Austria extends the Convention's applicability to foreign awards rendered in non-contracting states, which promotes Austria's arbitration-friendly position.

### **VIAC – Vienna International Arbitral Centre**

The Vienna International Arbitral Centre (VIAC), headquartered in Austria's capital, is one of Europe's leading and most renowned arbitral institutions. It is established as the Permanent International Arbitration Institution of the Austrian Federal Economic Chamber and administers approximately 55 new cases per year (10-year average). VIAC also provides its own arbitration rules, the "*Vienna Rules*".

VIAC acted fast during the COVID-19 pandemic, giving parties the chance to continue the resolution of their disputes despite world-wide restrictions, allowing for proceedings less reliant on physical submissions and hearings with the physical presence of the parties and the tribunal at the same location.

The *Vienna Rules* saw some adaptations to adjust for the challenges brought by the COVID-19 pandemic, which have been formally reflected in the newly published 2021 Vienna Rules. These include express possibility to conduct oral hearings "*in person or by other means*". Newly included are also the "*Supplementary Rules for Disputes Relating to Succession*" and rules regarding the disclosure of third-party funding.

The new rules entered into force as of 1 July 2021 for proceedings commenced after 30 June 2021. VIAC also published the VIAC Rules of Investment Arbitration and Mediation for the first time in 2021.

### **Current issues and developments**

Austria has earned a reputation for imposing strict measures in the ongoing fight against the COVID-19 pandemic. There have been several lockdowns, stricter rules on entry requirements from countries affiliated with especially high numbers of infections or novel variants of the virus, and Austria was the first EU Member State to announce it would make COVID vaccinations mandatory.

Although oral hearings may continue to face difficulties throughout the year, given the swift adjustment to remote hearings, the pandemic should only have a small impact on the conduct and duration of arbitration proceedings. The Austrian Supreme Court just recently held that even when one party opposes, ordering a remote hearing in arbitration is admissible and does not constitute a reason to challenge the arbitral tribunal. This decision is a precedential landmark decision as it appears to be the first decision of any supreme court worldwide to tackle this issue.

Overall, the Austrian arbitration market seems to not have been greatly impacted by the pandemic if the number of VIAC administered cases commenced in 2020 is taken as an indicator. With 40 new cases only a slight decrease has been reported compared to 45 new cases in 2019.

