

International Comparative Legal Guides



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Austria

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1 Litigation – Preliminaries

1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?

Austria is a civil law jurisdiction. The rules of contentious civil procedure are comprehensively governed by the Austrian Code on Civil Procedure (ACCP; *Zivilprozessordnung – ZPO*). Additionally, the Austrian Law on Jurisdiction (*Jurisdiktionsnorm – JN*) governs jurisdictional as well as organisational aspects of civil procedure and Austrian courts. The Austrian Enforcement Act (*Exekutionsordnung – EO*) contains provisions regarding the enforcement of judgments as well as preliminary injunctions.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

District courts (*Bezirksgerichte*) and regional courts (*Landesgerichte*) are the courts of first instance in Austria. District courts are competent to decide on (i) commercial matters with an amount in dispute below EUR 15,000, (ii) certain family law matters, and (iii) certain disputes regarding lease agreements regardless of the amount in dispute. Regional courts are competent to decide as the first instance in all commercial matters exceeding EUR 15,000 in dispute. For certain areas of law, specific courts are solely competent to decide, such as (i) the courts dealing with commercial disputes between entrepreneurs, or (ii) labour and social law courts.

Depending on the court deciding in the first instance, appeals can be either filed to:

- (i) the regional courts (against district court decisions); or
- (ii) to one of the four Austrian higher regional courts (*Oberlandesgerichte*) (against decisions of the regional courts).

As third and final instance, appeals can be made to the Austrian Supreme Court (*Oberster Gerichtshof*). In general, the courts of first instance are bound by decisions of the Austrian Supreme Court or the appellate court. Courts are not bound by decisions of another court of the same level.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Civil proceedings are initiated by one party filing an action with a court. The court will then serve the statement of claim to the

defendant and order the filing of a statement of defence within four weeks.

A preparatory hearing will be held which will set the structure of the proceedings, especially the taking of evidence. After the taking of evidence, the judge will close the proceedings and render its decision.

The latest available statistics published by the Austrian Judiciary show some interesting developments regarding the duration of civil proceedings, which can likely be linked to the ongoing COVID-19 pandemic. While the median duration for contentious civil proceedings before the district courts increased from six months (2019) to 6.9 months (2020), proceedings before regional courts saw a slight decrease from 12.8 months (2019) to 12.7 months (2020). Overall, roughly 75% of contentious civil proceedings before district courts and roughly 50% of regional court proceedings were decided within 12 months. Only 3.4% of all contentious civil proceedings had a duration of more than three years.

For entirely monetary claims of less than EUR 75,000, expedited proceedings are mandatory. Purely based on the statement of claim and without a hearing or the opposing party having the opportunity to be heard, the court will issue a payment order. The defendant then has the possibility to object to the payment order within four weeks of service of the payment order, and regular civil proceedings will be initiated. If the defendant does not object, the payment order becomes enforceable.

Similarly, Regulation (EC) No. 1896/2006 provides for a European order for payment procedure in expedited proceedings for monetary claims to be asserted in another EU Member State. The amount in dispute does not limit the possibility of initiating such proceedings.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

In general, parties are free to agree on the jurisdiction of specific courts for (specific or all) disputes between them. They are further free to even choose a different forum for their dispute and to use alternative dispute resolution tools, such as arbitration or mediation.

However, certain limitations exist with regard to consumers, as consumers can only validly agree to a forum clause once a dispute has already arisen, or the dispute resolution clause foresees the jurisdiction of the court where the consumer is domiciled. Furthermore, where parties agree on the “exclusive” jurisdiction of a specific court, it is treated as a jurisdiction of choice (*Wahlgerichtsstand*) and cannot replace a statutory exclusive jurisdiction if such exists for the dispute.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

In general, the costs of civil proceedings mainly include court fees, legal fees, expert fees and miscellaneous expenses such as costs for translators, etc. The court fees are determined based on the subject matter and are generally calculated based on the amount in dispute.

The winning party is entitled to reimbursement of their costs based on their rate of success (“loser pays costs” principle).

Reimbursement of legal fees is determined based on the Austrian Statutory Act on Lawyer’s Tariffs (*Rechtsanwaltstarifgesetz*), irrespective of a party’s fee arrangement with its legal counsel. The tariff specifies the appropriate remuneration for each act deemed necessary in litigation, based on the amount in dispute and the complexity of the performed procedural act.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are claimants and defendants permitted to enter into contingency fee arrangements and conditional fee arrangements?

Contingency fee arrangements are not permissible under Austrian law and, in particular, under Austrian Bar rules. To a certain extent, it is permitted to conclude conditional fee arrangements, e.g., increased hourly rates in case of a successful outcome. However, such agreements may not be directly linked to the amount won. (See question 1.7 regarding third-party funding.)

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

In general, claims may be assigned to another person under Austrian law. It is not permitted, however, to merely assign the right to litigate on behalf of another person.

Furthermore, parties to a dispute are free to obtain the services of a third-party funder to finance the proceedings. Although the funder will not be entitled to directly act in the proceedings, funders will usually be involved in strategic decisions.

Funding agreements are assessed like any other contract under Austrian law to determine whether they are in breach of statutory prohibitions or good morals. If deemed so, such agreements are void (section 879, paragraph 1 Austrian Civil Code (ACC; *Allgemeines Bürgerliches Gesetzbuch* – ABGB)).

1.8 Can a party obtain security for/a guarantee over its legal costs?

In case a claimant is neither Austrian nor has their habitual residence in Austria, the defendant can request the foreign claimant to provide security for costs if the claimant resides outside of the EU and if there is no international treaty stipulating otherwise.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

In general, there are no formal steps that must be taken before initiating civil proceedings in Austria. Exceptions do exist

for specific subject matters where some form of specialised proceedings must be exhausted before civil court proceedings may be initiated (e.g., certain aspects of tenancy law).

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The general statute of limitations in Austria is 30 years. However, most civil cases fall under the scope of the shorter three-year statute of limitations.

For example, a claim for damages is barred three years after (i) the damage occurred, and (ii) the person responsible for the damage became aware or should have become aware of the person who suffered the damage (section 1489 ACC).

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

In general, all civil court proceedings are initiated by the claimant filing a statement of claim with a court. After a cursory examination of its jurisdiction, the court will serve the statement of claim on the defendant. Service of court documents is generally performed pursuant to the Austrian Delivery Act (*Zustellgesetz*).

Service of court documents is generally effected via a special category of registered mail (*Rückscheinbrief*) used by courts and authorities. If the document cannot be delivered, it will be deposited at the post office for two weeks and the recipient must be notified of this fact. The document is deemed delivered on the first possible day of collection at the post office. This assumption may be refuted.

For parties represented by legal counsel, the use of the electronic legal communication system (*Elektronischer Rechtsverkehr*) is mandatory.

For the service of court documents to another EU Member State, Regulation (EC) No. 1393/2007 applies.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

A preliminary injunction can be applied for before the competent court. Preliminary injunctions may even be applied for before initiating civil proceedings. An injunction can be filed to secure:

- monetary claims (to the extent no enforcement measures are available) (see section 379 EO);
- a claim for a particular performance (including acceptance and omission) (see section 381 No. 1 EO); or
- a right or legal relationship (see section 381 No. 2 EO).

The main criterion for a preliminary injunction is whether there is a threat of irreversible harm if the injunction is not granted.

3.3 What are the main elements of the claimant’s pleadings?

The statement of claim must include: (i) a specific request for relief; (ii) the facts that provide the basis for the claim; and (iii)

why the seized court has jurisdiction (see section 226 ACCP). In general, a substantiation of the claim is required. If a statement of claim is inconsistent, the court must order an amendment of the statement of claim.

3.4 Can the pleadings be amended? If so, are there any restrictions?

As long as the amendment of the facts does not lead to an amendment of the claim, the claimant may state additional facts. Likewise, the claimant may change its legal evaluation as, under Austrian law, it is in general not required to provide the court with a legal evaluation of the facts.

Prior to serving the statement of claim on the defendant, the claimant can also amend its claim. After the claim has been served on the defendant, the claimant can only amend its claim if the defendant agrees. The court can overrule any objection if it (i) also has jurisdiction over the amended claim, and (ii) deems the amendment would not lead to a significant delay of the proceedings (see section 235 ACCP).

Changes to the quantum of the claim are always admissible, as long as exceeding the threshold for the amount in dispute would not require the jurisdiction of a different court (regional court over district court).

Amendments to the claim are admissible until the court of first instance closes the proceedings, which is carried out after the court has heard all evidence deemed necessary to render a judgment.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

One of the main principles of civil litigation in Austria is the principle of party disposition. Therefore, parties are free to end proceedings by withdrawing their claim. Austrian law distinguishes between two types of withdrawing claims:

- withdrawal of claims, including a waiver of the claims; and
- withdrawal of claims without waiving them.

If a party withdraws and also waives its claims, it may generally do so up until the end of the oral hearing of the third instance court (if a hearing was held) or until the third instance court has transmitted its judgment to the court registry for engrossment if no oral hearing is held. The same is true for a withdrawal without a waiver of rights, if the opposing party consents. Otherwise, a claim can generally only be withdrawn without waiver up until the statement of defence has been served on the defendant.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The statement of defence must include: (i) a specific request for relief; (ii) reasoning as to why the facts in the statement of claim are incorrect; and (iii) if the defendant contests the jurisdiction of the court, an objection to such jurisdiction.

A counterclaim (*Widerklage*) is considered an independent claim under Austrian law, wherein the party bringing the claim seeks a judgment by the court on such a claim. It may only be dealt with by the seized court if it also has jurisdiction over the counterclaim. The amount in dispute may therefore even exceed the claim brought in the first place.

For a set-off defence (*Aufrechnungseinrede*), the court does not have to have jurisdiction over the basis of the set-off claim.

4.2 What is the time limit within which the statement of defence has to be served?

In proceedings before regional courts, the defendant is ordered to file their statement of defence within four weeks of service.

In district court proceedings, there is no obligation for the court to order a statement of defence to be filed; a hearing can be scheduled right away. The judge may, however, order the defendant to file a statement of defence. In specialised proceedings such as employment matters and default actions, no statement of defence is filed.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

In general, only the parties to a dispute are bound by the judgment rendered in the proceedings. Austrian law provides for the possibility to also involve third parties in the proceedings. The effects of the judgment on the third party will depend on the third party's role in the subsequent proceedings; i.e., whether the third party joins as an additional defendant or intervening party.

4.4 What happens if the defendant does not defend the claim?

Generally, if a party fails to participate in the proceedings, the court may render a default judgment (*Versäumnungsurteil*) following a corresponding application by the non-defaulting party. Reasons for the application for a default judgment may also include that the defendant did not file its statement of defence in a timely manner.

4.5 Can the defendant dispute the court's jurisdiction?

It is possible for the defendant to dispute the court's jurisdiction by way of objection (*Einrede der Unzuständigkeit*). Such an objection must be made before the defendant makes any submissions on the merits or before orally pleading its case.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Any party to the proceedings may serve a third-party notice on any person it deems to have a legal interest in the outcome of the proceedings. The third party is, however, not obligated to join the proceedings. Any necessary factual findings of the judgment cannot, however, be contested by the third party in subsequent proceedings regarding regress if the third party refused to participate in the previous proceedings.

Likewise, it is generally possible for any third party to take initiative and intervene in pending proceedings without being notified if it holds a legal interest in one of the parties winning. Such an intervention is possible up until a judgment is rendered and becomes final and binding.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

If more than one case is pending between the same parties before the same court, these proceedings can be consolidated to allow for faster and more cost-efficient adjudication of the claims.

5.3 Do you have split trials/bifurcation of proceedings?

Just as with consolidation of proceedings, the court may decide to split proceedings. This can take the form of hearing different claims brought in the same statement of claim in separate hearings, or limiting the proceedings to specific issues (see sections 187–189 ACCP).

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

Austria implemented a system of fixed allocation of cases (*Geschäftsverteilung*) to deter any influence on judgments or the selection of judges by the parties. The allocation is determined in advance for a period of one year, commencing on 1 February until 31 January of the following calendar year. Different principles are applied when drawing up the allocation of cases for the next year, such as distribution by first letter of the last name of the defendant or based on the subject matter.

Only in extraordinary circumstances may a case be allocated to another judge, a situation which requires the approval of the competent senate (*Personalsenat*) of the respective court. Such grounds may be that the competent judge is hindered or does not have the capacity to administer the case in a timely manner due to a heavy workload.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Under Austrian law, the court through the (presiding) judge leads the proceedings. As such, the court sets the dates for the hearings and establishes the programme for the proceedings based on the parties' submissions on law and facts. The court further assesses which aspects it deems necessary for the adjudication of the matter, and shares this with the parties.

The parties may make several interim applications which include the hearing of (expert) evidence, adjournment of proceedings and extension of time limits.

6.3 In what circumstances (if any) do the civil courts in your jurisdiction allow hearings or trials to be conducted fully or partially remotely by telephone or video conferencing, and what protocols apply? For example, does the court – and/or may parties – record and/or live-stream the hearings and may transcriptions be taken? May participants attend hearings remotely when they are physically located outside of the jurisdiction? Are electronic or hard-copy bundles used for remote hearings?

Based on regulations enacted as reactions to the impact of COVID-19, Austrian civil courts may schedule hearings via

video conference. The possibility of remote hearings remained valid until 30 June 2022.

Previously, no corresponding statutory provision was incorporated under Austrian law. Contrary to domestic arbitration proceedings, the parties must agree to the remote hearing. Connecting to the hearing via telephone is not permitted. The Federal Ministry of Justice recommends Austrian civil courts use Zoom.

The court must keep a record of the hearing, whereas no specific regulations regarding protocols for remote hearings exist so far. Usually, protocols are dictated and transcribed. There are no provisions allowing for live streams or recordings, and no rules regarding the use of electronic or hard-copy bundles for remote hearings.

Participation in remote hearings from abroad should be possible and actually prevents otherwise possible violations of the right to be heard, especially where parties cannot attend live hearings due to restrictions. There are no provisions explicitly allowing or forbidding parties or other involved persons to attend remote hearings from abroad.

6.4 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

As the court must ensure the maintenance of good order and the expedient conduct of the proceedings – especially during oral hearings – the court may impose fines on disobeying parties. The court may even expel parties from the courtroom. Further “sanctions” include the rejection of late submissions.

6.5 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

A statement of case needs to be conclusive and substantiated. The court will discuss the lack of conclusiveness and substantiation with the parties, and will generally give the claimant the chance to rectify its statement of case within a certain time period. If the claimant fails to do so, the court will dismiss the claim.

Generally, the court will render a decision on the merits as soon as it deems all necessary facts and evidence to have been gathered.

6.6 Can the civil courts in your jurisdiction enter summary judgment?

Summary judgments are not available under Austrian law.

6.7 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Since civil proceedings are governed by the principle of party disposition, the court may not simply discontinue initiated proceedings. The parties may request to stay the proceedings, e.g., for settlement negotiations. The court may also order to stay proceedings in further certain circumstances; e.g., if the outcome of the proceedings depends on the outcome of another pending proceeding. Proceedings will be interrupted *ipso jure* if one party becomes insolvent or dies.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

In general, each party bears the burden of proof regarding its own submissions. As a civil law country, there are no pre-trial discoveries. However, the precautionary taking of evidence before filing a claim is permissible in certain circumstances. Evidence can be secured before filing a claim upon request if (i) there is a risk of losing the evidence, or (ii) the present condition of an object is to be determined and the applicant proves it has a legal interest.

Based on certain grounds, the court can order the opposing party or even a third party to produce specific documents. The opposing party cannot object to the production of specific documents if: (i) the opposing party itself relies on the document to prove its position; (ii) the opposing party is obligated by certain provisions of civil law to hand out the document; and (iii) the requested document is qualified as a joint document (e.g., the contract in dispute).

Information and documents disclosed to attorneys by their clients are privileged and generally do not have to be disclosed. There are no rules regarding the disclosure of electronic documents.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

Austrian law provides that certain persons (family members) and professionals (e.g., attorneys) do not have to testify or produce privileged documents. Attorney-client privilege also extends to the attorney's employees.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

See question 7.1.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

Apart from the court's role in deciding on a party's request to disclose certain documents, the court may, at its own discretion, order the production of certain documents. As the court has the obligation to ascertain the truth, it may request additional evidence from the parties. If relevant evidence is not produced by a party, the court will draw adverse inferences.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

The court may order the production of documents in redacted form to protect commercial or trade secrets, if requested by a party.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

Generally, the party relying on a fact or legal provision carries the

burden of proof. The principle of free assessment of evidence applies to the court. If the relevant evidence is not produced by a party, the court will draw adverse inferences.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

Austrian law specifically mentions the following "classic" types of evidence: (i) documents; (ii) witnesses; (iii) experts; and (iv) visual inspection and examination of the parties. However, in general, all sources of knowledge can be admitted as evidence.

8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

Witnesses can be called by the parties or the court. The court will first inform the witness of their obligation to tell the truth and of possible criminal law repercussions if false evidence is given. The witness will then be asked about their relationship with the parties. The court will lead with questions posed to the witness, followed by questions from both parties. Suggestive questions are inadmissible.

Written witness statements are not admissible in Austrian civil proceedings. Generally, attorneys are permitted to contact and communicate with witnesses. However, attorneys must avoid any form of undue influence of witnesses. Extensive witness preparation, as known in international arbitration or common law jurisdictions, will therefore not be conducted.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

Parties are generally permitted to instruct expert witnesses and submit expert reports. As the court will, however, appoint its own expert, the court-appointed expert's opinion generally has more weight, as they owe their duties to the court.

Usually, the court and parties formulate the question(s) to be posed to the expert appointed by the court. Once the expert renders his report, the parties will have the opportunity to pose questions on the report during a hearing. An expert appointed by a party may also attend such hearing and, in some cases, will be permitted to directly pose questions to the court-appointed expert.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

There are generally two forms of court decisions: (i) judgments; and (ii) other orders, especially decisions not ruling on the merits of the case (e.g., procedural orders).

The different types of judgments can be classified based on the:

- type of decision taken: (partially) granting or (partially) dismissing judgments;
- type of the asserted claims: judgments on performance; declaratory judgments; and judgments aimed at the

direct establishment, amendment or cancellation of legal relationships;

- parties' assertions: two-sided or one-sided judgments;
- scope of the judgment: final judgment deciding on the merits of the case; and
- interlocutory judgments, judgments partially deciding on the merits of the case or supplementary judgments.

9.2 Are the civil courts in your jurisdiction empowered to issue binding declarations as to (i) parties' contractual or other civil law rights or obligations, (ii) the proper interpretation of wording in contracts, statutes or other documents, (iii) the existence of facts, or (iv) a principle of law? If so, when may such relief be sought and what factors are relevant to whether such relief is granted? In particular, may such relief be granted where the party seeking the declaration has no subsisting cause of action, and/or no party has suffered loss, and/or there has been no breach of contract/duty?

Under Austrian law, it is possible to seek a declaratory judgment (*Feststellungsurteil*) regarding (i) the existence or non-existence of rights, and (ii) the authenticity of documents.

In contrast, it is not possible to seek declaratory relief regarding, e.g.:

- facts;
- legal qualification of facts;
- legal relationships that did not exist at the closing of the first instance proceedings; or
- abstract questions of law.

Also, the mere question of the proper interpretation of wording in contracts, statutes or other documents may not be the subject of declaratory reliefs.

A declaratory judgment can only be sought if the party can demonstrate legal interest – not merely economic or personal – in the declaration due to a current cause. Even if the legal relationship has already ended, the legal interest in a declaratory judgment may continue to exist.

Generally, claims seeking performance take priority over claims merely seeking declaratory relief. Thus, a claimant may only seek declaratory relief if they cannot (yet) claim for performance, e.g., regarding future damages that may arise out of a breach of contract or law that has already occurred.

During pending proceedings, either party may also file an interim application for declaratory relief (*Zwischenantrag auf Feststellung*) regarding (i) a question that is a prerequisite to deciding on the claim brought, and (ii) if the answer to such question is of relevance that exceeds the current dispute. In such cases, the court can render a partial judgment as soon as it is able to answer this particular question or include its answer in its final judgment.

9.3 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The court will award damages and interest, if claimed, to the winning claimant. The costs of litigation are generally awarded according to the “loser-pays” principle. The court will never award more than what is claimed for. The losing party will be ordered to pay the opposing party's attorney's fees pursuant to the Austrian Statutory Act on Lawyer's Tariffs (*Rechtsanwaltstarifgesetz*). Court fees are generally paid upfront by the claimant and are ultimately borne by the losing party.

9.4 How can a domestic/foreign judgment be recognised and enforced?

Domestic judgments are generally enforceable once they have become legally binding. Several enforcement measures are available, and are differentiated depending on whether the judgment ruled on a payment obligation or on a performance obligation.

Foreign judgments of non-EU Member States will be recognised and enforced in Austria if the following two requirements are met:

- the foreign judgment must be enforceable according to the laws of the state in which the judgment was rendered; and
- reciprocity must be guaranteed by regulations or international treaties between Austria and the foreign state.

Pursuant to the Brussels I Regulation (Council Regulation 1215/2012), judgments rendered by courts of other EU Member States will be recognised and enforced in Austria without any special procedure being required.

9.5 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

Decisions of the district courts may be appealed before the regional courts. Decisions of the regional courts may be appealed before the higher regional courts.

Decisions of appellate courts may only be appealed if the amount in dispute exceeds EUR 5,000. If the amount in dispute does exceed EUR 5,000 but not EUR 30,000, an appeal to the Austrian Supreme Court as third and final instance is subject to the appeals court granting leave to appeal. In general, an appeal to the Austrian Supreme Court is only admissible if the decision depends on the solution of a question of substantive or procedural law which is of considerable importance for maintaining legal unity, certainty or development.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Usually, the court will discuss any willingness of the parties to settle during the first hearing, i.e., the preparatory hearing. Parties may also be further encouraged to settle, as a settlement will reduce the payable court fees.

11 Alternative Dispute Resolution

11.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Austria is an arbitration-friendly jurisdiction and one of the world's leading seats for arbitration. It is seen as a neutral ground for the resolution of disputes. Arbitral awards are binding and generally enforceable.

Mediation is based on the voluntary participation of the parties. A professionally trained, neutral mediator uses recognised methods to systematically promote communication between the parties, with the aim of facilitating a resolution of their conflict.

In expert determination, an expert renders a binding evaluation of the factual or legal situation. The expert determination itself is, however, not directly enforceable. Arbitration or litigation proceedings will have to be conducted to obtain an enforceable title.

Regarding conciliation, the Alternative Dispute Resolution Act (*Alternative-Streitbeilegung-Gesetz*) provides for eight government-recognised dispute resolution bodies handling consumer contract disputes with Austrian companies. The dispute resolution body itself does not render a binding award. Participation in the out-of-court procedures of a conciliation service is voluntary and guaranteed to take place:

- before an impartial and independent arbitrator;
- as a rule, free of charge;
- promptly (within 90 days); and
- confidentially.

11.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Austrian arbitration legislation is mainly based on the UNCITRAL Model Law 1985, as directly incorporated into the ACCP. As *lex arbitri*, these provisions (Chapter 4 ACCP (sections 577–618)) govern all arbitrations seated in Austria.

Regarding mediation, the Austrian Mediation Act (*Zivilrechts-Mediations-Gesetz*), EU Mediation Act (*EU-Mediations-Gesetz*) and Vienna Mediation Rules under the Vienna International Arbitral Centre (VIAC) should be noted.

Please also see question 11.1.

11.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Pursuant to Austrian law, any claim involving an economic interest may be subject to an arbitration agreement. Claims without an economic interest may further be brought to arbitration if the parties may legally conclude a settlement on the matter. In contrast to the broad scope of claims open for arbitration, section 582 (2) ACCP expressly excludes arbitration for all matters concerning family law and contracts falling under the scope of the Austrian Tenancy Act.

11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Chapter 4 ACCP provides all instances in which state courts come into play in arbitration proceedings, irrespective of whether the

seat of arbitration is in Austria or not. For instance, parties to an arbitration proceeding seeking interim relief can request the arbitral tribunal as well as an Austrian court to take necessary measures. Also, Austrian courts can provide legal assistance in matters in which the arbitral tribunal has no authorisation, such as requesting a witness to take an oath. Finally, Austrian law provides for a restrictive annulment procedure to set aside arbitral awards. The claim initiating this procedure is to be brought before the Austrian Supreme Court.

11.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

Please refer to question 11.1 regarding the binding nature and enforceability of the outcomes of different alternative dispute resolution methods.

Domestic arbitral awards may only be set aside by the Austrian Supreme Court, which has sole jurisdiction in proceedings on such matters.

As mediation is based on the voluntary participation of the parties, there will be no sanctions in the event that no mediation is carried out.

11.6 What are the major alternative dispute resolution institutions in your jurisdiction?

As an arbitration hub in central and eastern Europe, Austria is home to the VIAC, a well-established arbitration institution. Vienna has also been chosen by the China International Economic and Trade Arbitration Commission (CIETAC) as the seat of the CIETAC European Arbitration Centre. The Permanent Court of Arbitration (PCA) also recently opened a regional office in Vienna.



Dr. Nikolaus Pitkowitz is a founding partner and head of dispute resolution at Pitkowitz & Partners, and President of the Vienna International Arbitral Centre (VIAC).

Nikolaus Pitkowitz is considered one of the leading Austrian arbitration practitioners, having acted as party counsel and arbitrator in over 130 international disputes, ranging from smaller to multibillion cases. He acted as counsel in many complex and high-profile litigations in front of Austrian Courts and the European Court of Justice, and in arbitrations seated across Europe, the Americas and Asia. Most notable is his role as counsel in the largest ever pending arbitration in Austria. Industries and matters covered include energy, automotive, telecommunications, arts, (post-)M&A, real estate and construction.

He is arbitrator and panel member of all leading arbitration institutions, and Fellow of the Chartered Institute of Arbitrators (CIArb). He also acts as Vice-Chair of the International Arbitration Committee of the Section of International Law of the American Bar Association (ABA).

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Roxanne is a member of the Young Austrian Arbitration Practitioners (YAAP), of the International Association of Young Lawyers (AIJA) as well as of the Chartered Institute of Arbitrators (CIArb).

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Pitkowitz & Partners, based in Vienna, is a leading commercial law firm. The firm's focus is on international arbitration and complex litigation, as well as on real estate and construction law.

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