

AUSTRIA

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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VERSION: 7 MAY 2018

There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Vienna offers an excellent environment for arbitration proceedings: Supported by arbitration-friendly and reliable state courts and its central, easy-accessible, cost-efficient location in the heart of Europe, Vienna managed to steadily increase its importance as an arbitration hub, in particular for the CEE region.

Key places of arbitration in the jurisdiction	The key place of arbitration in Austria is Vienna.
Civil law / Common law environment?	Civil law.
Confidentiality of arbitrations?	Not expressly provided.
Requirement to retain (local) counsel?	It is not required to engage a (local) counsel.
Ability to present party employee witness testimony?	It is possible to present a party employee as witness.
Ability to hold meetings and/or hearings outside of the seat?	It is possible to hold meetings and/or hearings outside the seat.
Availability of interest as a remedy?	Interest is generally available as a remedy (as a matter of substantive law).
Ability to claim for reasonable costs incurred for the arbitration?	It is possible to claim reasonable costs incurred for purposes of the arbitration.
Restrictions regarding contingency fee arrangements and/or third-party funding?	There are certain restrictions regarding contingency fee arrangements. Third-party funding is not restricted. Strict consumer protection and labour law provisions.
Party to the New York Convention?	Austria is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention").
Other key points to note	<ul style="list-style-type: none"> – Austrian arbitration law closely follows the UNCITRAL Model Law on International Commercial Arbitration ("Model law"). – The procedure for challenging an arbitral award has recently been reformed: The Supreme Court now decides on a challenge as the first and last instance. – The Supreme Court is known for its high-quality judgments and reliably upholds the rule of law in respect to arbitration.
WJP Civil Justice score (2017-2018)	0.81

ARBITRATION PRACTITIONER SUMMARY

The Austrian Arbitration Act offers high flexibility in respect to arbitration proceedings: There are few mandatory provisions, which particularly ensure the fair and equal treatment of the parties and provide for minimal state supervision. Generally, the state courts have proven to be reluctant to intervene in arbitration proceedings or to reverse decisions of arbitral tribunals. Jointly with the reliability and effectiveness of Austrian state courts, the legal and procedural framework in Austria offers strong arguments in favour of conducting arbitration proceedings in Austria.

Date of arbitration law?	The Austrian Arbitration Act setting out the current framework for arbitration entered into force on 1 July 2006.
UNCITRAL Model Law? If so, any key changes thereto?	The Model Law has mostly been implemented. Key differences are consumer and employee protection provisions, which practically make it impossible for sellers and employers to pursue claims against consumers or employees in arbitration.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	At the lower courts, there are no specialized arbitration judges. However, the Supreme Court has a specialized department and serves as the first and final instance for the adjudication of challenges to an award.
Availability of <i>ex parte</i> pre-arbitration interim measures?	<i>Ex parte</i> interim measures cannot be issued by an arbitral tribunal.
Courts' attitude towards the competence-competence principle?	State courts are generally arbitration-friendly and fully recognize the principle of competence-competence. The decision of the arbitral tribunal on its own competence is only subject to review in case of a challenge of the award.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	There are no additional grounds of annulment compared to the New York Convention.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	State courts generally do not recognize or enforce foreign awards that have been annulled at the seat of arbitration; if the ground for annulment have been a lack of arbitrability or a violation of <i>ordre public</i> , the state courts decide themselves if these grounds are also established under Austrian arbitration law.
Other key points to note?	Austrian arbitration law offers high flexibility in respect to the conduct of arbitration proceedings.

JURISDICTION DETAILED ANALYSIS

1. Legal Framework

Arbitration has a well-developed tradition in Austria, with the origins of its legal development dating back over 120 years. The first codification of arbitration law entered into force in 1895. This old framework has been revised and amended until it was entirely replaced by the Austrian Arbitration Act, which entered into force on 1 July 2006. The current arbitration law is incorporated into the Austrian Code of Civil Procedure (“ACCP”), Sections 577 to 618.¹

The Austrian Arbitration Act introduced a modern arbitration law built upon the Model Law of 1985. Since the Austrian Arbitration Act was drafted before the amendment of the Model Law in 2006, the new Articles 17a *et seq* of the Model Law have not been implemented into the ACCP.

The current legal framework implements all principal legal features of the Model Law. As a key distinction from the Model Law, the ACCP implements particularly strict provisions regarding consumer rights and labour law disputes.² Furthermore, Austrian arbitration law - contrary to the Model Law - does not differentiate between domestic and international, or commercial and non-commercial arbitration. All rules apply equally to the respective form of arbitration, except for where specifically provided otherwise.

In the course of the latest revision of the arbitration law in 2013, the Supreme Court was designated as the first and final instance for proceedings concerning the constitution of arbitral tribunals, challenges of arbitral awards and claims regarding a declaration of the existence or non-existence of an arbitral award. Notably, in matters related to consumers or labour law, the former three instances (district court – regional court – Supreme Court) remain in place. This revision was crucial for increasing the speed of arbitration proceedings, and serves as proof that the Austrian legislator is eager to promote Austria as a place for arbitration and make Austrian arbitration proceedings as effective, streamlined and expedient as possible.

2. Arbitration Agreement

The provisions of the Austrian arbitration law regarding arbitration agreements as set out in Sec 581 ACCP are fairly comparable to the provisions set out in Art 7 Model Law.

2.1 Law governing the arbitration agreement

Austrian arbitration law does not set out any rules regarding which law would be applicable to arbitration agreements. Furthermore, arbitration agreements do not fall within the scope of the Rome I regulation as the general rule on conflict of law;³ as a result there are no express legal provisions under Austrian law that would apply to the question of which law is applicable to an arbitration agreement.

Thus, Austrian courts have developed their own rules on this matter, as recently summarized in a decision of the Supreme Court:⁴

- First, the law agreed upon by the parties is applicable;
- In absence of a choice of law, the law of the seat of the arbitration is applicable.

As an important side note, the law applicable to the main agreement is not necessarily the law applicable to an embedded arbitration clause. This is a legal consequence of the application of the doctrine of separability: The arbitration clause and the main agreement do not necessarily share the same legal fate. While the

¹ The VIAC publishes a regularly updated English translation of Secs. 517 to 618 ACCP on its webpage ([link](#)).

² Sec 617 and 618 ACCP; discussed below.

³ Express exception Art I para 2 lit e Rome I Regulation (EC) No 592/2008 ([link](#)).

⁴ Supreme Court, June 23, 2005, docket no. 18 OCg 1/15v (Austria) ([link](#)).

doctrine of separability is not explicitly set out in the ACCP (interestingly, the second sentence and the third sentence of Article 16(1) Model Law are omitted), the Supreme Court has accepted this doctrine on the basis of the principle of party autonomy as the following decisions illustrate:

- Decision dated 10 October 1962:⁵ This case concerned the rescission of an agreement due to error. The Supreme Court ruled that an arbitration agreement does not necessarily share the legal fate of the main agreement and it is therefore possible that, while the main agreement is rescinded due to error, the arbitration agreement remains intact.
- Decision dated 23 June 2015:⁶ In this recent case, the Supreme Court came to the conclusion that while the main agreement was governed by German law, the arbitration clause was governed by Austrian law, because the seat of arbitration was set in Austria. There was no choice of law clause in the agreement. In this decision, the Supreme Court reaffirmed its position that based on the parties' intent the legal fate of an arbitration clause may deviate from the legal fate of the main agreement.

2.2 Formal requirements to arbitration agreements

As mentioned, the Austrian arbitration law is modelled after Art 7(2) Model Law; accordingly, a written agreement is required. In detail, an arbitration agreement can be validly agreed upon:⁷

- In the form of a written document signed by the parties; or
- Through the exchange of letters, emails, facsimiles or other means of communication that record an agreement.

If a contract satisfies one of these two bullet points and refers to another document as part of the agreement (e.g., to a general terms and conditions sheet) that contains an arbitration clause, such arbitration clause also constitutes a valid arbitration agreement between the parties.⁸

A formal defect is retroactively cured after the commencement of arbitral proceedings as soon as the other party makes a submission on the merits without objecting to the arbitration agreement or the arbitrator's authority at the time of the submission.⁹

Special rules apply to arbitration agreements with a consumer and within the scope of labour law (as set out below).

2.3 Extension of the arbitration agreement to third parties

Generally speaking, compared to other jurisdictions Austrian arbitration law is less open to the idea of including non-signatories to an arbitration proceeding that they have not expressly agreed to enter into. As an example, the group-of-companies-doctrine is viewed rather critically in Austria.¹⁰ Some authors even suggest that the application of this doctrine may in certain cases violate Austrian *ordre public*.¹¹

⁵ Supreme Court, Oct 10, 1962, docket no. 1 Ob 215/62 (Austria) ([link](#)).

⁶ Supreme Court; June 23, 2015, docket no. 18 OCg 1/15v (Austria) ([link](#)).

⁷ Sec 583(1) ACCP.

⁸ Sec 583(2) ACCP.

⁹ Sec 583(3) ACCP.

¹⁰ As observed by Gerold Zeiler, *Schiedsverfahren*, § 581 p. 104 (2nd edition 2014).

¹¹ Christian Hausmaninger in Fasching/Konecny, *ZPO*, § 581 p. 204 (2nd edition 2007).

In particular, Austrian legal literature firmly rejects the liberal approach of a decision made by the Higher Regional Court Munich stating that the directors of a company involved in the conclusion of an arbitration agreement on behalf of their company would be subject to the arbitration clause as well.¹²

Nonetheless, both Austrian case law and legal literature extend arbitration agreements to non-signatories under certain (rather narrow) circumstances. Austrian case law mostly focusses on the implied intent of the parties and extends arbitration agreements where it deems that such extension reflects the parties' common intent.¹³ This is especially the case for an assignor, direct beneficiary or obligor under the main agreement.¹⁴

Finally, Austrian arbitration law is, in principle, also familiar with the extension of arbitration agreement by virtue of "piercing the corporate veil" ("*Durchgriffshaftung*"), even though this is more the exception than the rule. In order to "pierce the corporate veil" in the context of arbitration agreements, it is required by Austrian case law that the person in question abuses the corporate form itself. Means of such abuse could be, by way of example, depriving a company of its valuable assets or abusing other legal means peculiarly to corporate legal forms.¹⁵

2.4 Objective Arbitrability

Unlike the Model Law, Austrian arbitration law contains a provision on objective arbitrability: any pecuniary claim that is subject to the jurisdiction of the civil courts is arbitrable.¹⁶ The term "pecuniary" is generally interpreted broadly. In particular, claims that fall within the jurisdiction of administrative governmental authorities or the criminal courts are not arbitrable.

Claims that are non-pecuniary are arbitrable as far as the parties can enter into a settlement agreement regarding the respective claim. Claims within the scope of the Austrian Tenancy Act or the Non-Profit Housing act as well as family matters are generally not arbitrable.¹⁷

In summary, the Austrian arbitration law takes a fairly liberal approach regarding the objective arbitrability and generously allows the parties to settle their matter by arbitration, as long as public matters are not concerned.

2.4.1 Consumer and Labour Law Protection

The possibility to enter into an arbitration agreement with a consumer has been made nearly impossible under the Austrian Arbitration Act 2006, and thus barely has any practical application. In short, the following restrictions apply:

- Subject matter can only be disputes that already exist;¹⁸
- The arbitration agreement has to be printed on a separate document; thus, an arbitration clause set out in the main agreement is not valid;¹⁹
- The document must be signed by the consumer himself; it is not possible to conclude the arbitration agreement via e-mail, facsimile or similar means of communication;²⁰

¹² OLG München, Feb 13, 1997, docket no. 29 U 4891/96 in NJW-RR 1998, 198 (Germany); Hausmaninger *supra*, § 581 p. 220.

¹³ Supreme Court, Mar 30, 2009, docket no 7 Ob 266/08f (Austria) ([link](#)).

¹⁴ Hausmaninger, *supra*, § 581 ZPO, p. 210 and 220.

¹⁵ Christian Koller in Liebscher/Oberhammer/Rechberger, *Schiedsverfahrensrecht I*, p. 3/314 (2012); legal holding of the Supreme Court no. RS0009098 ([link](#)).

¹⁶ Sec 582 ACCP.

¹⁷ Sec 582 ACCP.

¹⁸ Sec 617(1) ACCP.

¹⁹ Sec 617(2) ACCP.

²⁰ Sec 617(2) ACCP.

- If the other party is an entrepreneur, special obligations to inform the consumer apply;²¹
- Further restrictions on the place of arbitration and the place where oral hearings are held apply;²²
- Consumers can also rely on additional reasons for the setting aside of an award.²³

The same restrictions apply to subject matters concerning labour law.²⁴ These provisions are not based on the Model Law and are an Austrian peculiarity.

3. Intervention of Domestic Courts

As a general rule, Sec 578 ACCP provides that state courts must refrain from intervening in arbitration proceedings, except where the ACCP expressly provides for the power of a state court to do so. Thus, anti-suit injunctions against members of the arbitral tribunal or against parties to the arbitration proceedings as well as witnesses generally may not be obtained.

If a valid arbitration agreement is in a place that establishes the exclusive jurisdiction of an arbitral tribunal, the court will terminate court proceedings on the same matter, provided that the respondent objects to the court proceedings in time (before submitting a pleading on the merits or pleading orally).²⁵ If no party objects, the right to arbitration is considered to have been waived. This applies regardless of the seat of arbitration (*i.e.*, also if the seat of arbitration is in a foreign jurisdiction). Only if the arbitration agreement is null and void or inoperable or incapable of being performed, state courts will continue the proceedings even if the respondent objected in time.²⁶

Overall, Austrian courts are very “arbitration-friendly” and reliably dismiss cases when an arbitration agreement is in place. It is not necessary to apply for an anti-litigation injunction.

The concept of competence-competence is set out in Secs 584 and 592 ACCP. The arbitral tribunal is free to decide on its own jurisdiction.²⁷ This decision is only subject to a review by the state courts in case of a challenge of the award. Once a claim has been made in arbitration, all state courts have to dismiss any motion brought to it regarding that claim.²⁸ In practice, state courts reliably dismiss claims that are already subject of pending arbitration proceedings. All this applies regardless of the seat of arbitration (also if the seat of arbitration is in a foreign jurisdiction).

A negative decision of an arbitral tribunal on its own competence is binding upon the state courts: If an arbitral tribunal denies that it has jurisdiction on the matter of a dispute because the arbitration agreement is null and void or inoperable or incapable of being performed, a state court must not reject an action on the matter on the grounds that an arbitral tribunal has jurisdiction for the matter.²⁹

Notably, state courts may issue interim measures even during pending arbitration proceedings. This will be discussed below.

²¹ Sec 617(3) ACCP.

²² Sec 617(4) and (5) ACCP.

²³ Sec 617(6) and (7) ACCP.

²⁴ Sec 618 ACCP.

²⁵ Sec 584(1) ACCP.

²⁶ Sec 584(1) ACCP.

²⁷ Sec 592(1) ACCP.

²⁸ Sec 584(3) ACCP.

²⁹ Sec 584(2) ACCP.

4. Conduct of the Proceedings

Austrian arbitration law is highly flexible in respect of the conduct of the proceedings. Generally, the parties are free to decide on the conduct of the proceedings as they see fit. The few mandatory provisions ensure, *inter alia*, the right to be heard,³⁰ the right to fair proceedings,³¹ the right for interim relief at the state courts,³² the possibility to set aside an award³³ and the protection of consumers and employees.³⁴

4.1 Representation

Each party has the right to be represented and counselled. This right cannot be waived or limited.³⁵ Restrictions regarding the qualifications or citizenship of the counsel do not apply to the representation during the arbitration proceedings.

4.2 Independence and Impartiality of the Arbitrators

Each arbitrator is required to be independent and impartial; the parties cannot waive this requirement.³⁶ The independence and impartiality of the arbitrators is strictly enforced by the state courts.

Recently, the Supreme Court had to decide on two cases concerning the impartiality of an arbitrator.³⁷ These two cases are particularly interesting, since they also include a number of general remarks that provide an insight into how the Supreme Court would handle questions regarding the independence and impartiality of arbitrators. In its reasoning, the Supreme Court often referred to the German and Swiss Supreme Court as well as to the IBA Guidelines on the Conflict of Rules. This allows the conclusion that the Supreme Court generally adopts and accepts the international standards on the independence and impartiality of arbitrators. Thus, an arbitrator has the duty to fully disclose all facts that may give rise to doubts regarding his independence and impartiality. In the present cases, the fact that one of the counsels was a former university assistant of one of the arbitrators was not a valid reason in and of itself to justifiably question the impartiality of the arbitrator.

An arbitrator may be challenged in case of justifiable doubts regarding his impartiality or independence, or if the arbitrator does not have the qualifications that the parties had agreed on.³⁸ This right cannot be waived by the parties. The procedure of a challenge can generally be agreed upon by the parties. Under the Vienna Rules, the VIAC Board decides on challenges brought by a party.³⁹ Absent any agreement, the procedure set out in Sec 589(2) ACCP applies.⁴⁰ In any case, each party has the right to apply to the state court for a final decision on the challenge. This right cannot be waived by the parties.

The state court may upon a party's request also terminate an arbitrator's mandate if he or she fails to exercise his or her function in due time and:

- does not resign;
- no agreement between the parties can be reached on this issue; or

³⁰ Sec 594(2) ACCP.

³¹ Sec 594(2) ACCP.

³² Sec 585 ACCP.

³³ Sec 611 ACCP.

³⁴ Secs 617 and 618 ACCP.

³⁵ Sec 593(3) ACCP.

³⁶ Sec 588 ACCP.

³⁷ Supreme Court, Aug 8, 2014, docket no. 18ONc1/14p (Austria) ([link](#)); Supreme Court, Aug 5, 2014, docket no. 18ONc2/14k (Austria) ([link](#)).

³⁸ Sec 588 ACCP, comparable to Art 12 Model Law.

³⁹ Art 20(3) Vienna Rules 2013 ([link](#)).

⁴⁰ Comparable to Art 13(2) Model Law.

- the procedure that the parties agreed upon does not terminate the arbitrator's mandate.⁴¹

4.3 Interim Measures

The state courts have the power to issue interim measures in connection with pending arbitration proceedings; the arbitration agreement does not exclude the right of each party to seek interim relief from the state courts.⁴²

The arbitrators may also issue interim measures if the enforcement of a claim would otherwise be frustrated or, alternatively, if otherwise one of the parties would suffer irretrievable damage. As mentioned previously, the amendment of Art 17a *et seq* Model Law has not been implemented into the ACCP yet, since the Austrian Arbitration Act was drafted prior to the publication of the Model Law 2006. Nonetheless, the provisions of Art 17a *et seq* Model Law are similar to the requirements for the issuance of interim measures.

A tribunal does not have the power to issue *ex parte* interim measures under Austrian arbitration law. The tribunal may only issue interim measures after hearing both sides. This does not apply to state courts. However, if an interim measure only makes sense with a "surprise effect" to the opposing party, one has to apply for the interim measure at the competent state court.⁴³

4.4 Conduct of the Arbitration Proceedings

The arbitrators generally have a broad discretion in leading the arbitration proceedings. Most questions such as the length of the arbitration proceedings are not regulated and highly depend on the style of the arbitrators.

Arbitration proceedings are in principle private. Third parties as well as the press are generally not allowed to attend hearings. This may not be set out expressly in the ACCP; however, the principle of the privacy of arbitration proceedings is a recognized feature in Austria.⁴⁴ Due to these circumstances, the arbitration awards usually remain private and are not available to the public. Thus, most awards are only publically available if they are challenged at the Supreme Court and thereafter published in an anonymous version. The parties may of course agree otherwise and may jointly invite the public to participate in the arbitration proceedings.

There is no legal provision in the ACCP requiring the parties to keep the proceedings and its documentation confidential. Thus, it may be advisable to conclude a confidentiality agreement with the other party when signing the arbitration agreement, if sensitive information is concerned.

The actual place of the hearings or meetings is not regulated. The arbitral tribunal is free to choose the place as it deems appropriate, subject to the parties' agreement.⁴⁵ It is not mandatory to hold a hearing; both parties, however, must be able to present their case. The parties are of course free to agree that the proceedings shall be conducted in writing only or that one or several hearings shall be mandatory.

The rules on the taking of evidence in the ACCP are generally in line with the Model Law.⁴⁶ The arbitrators have the right to decide on the admissibility of evidence. Subject to the general principles of arbitration and the parties' agreement, they may exclude evidence if they deem it to be inappropriate or irrelevant.⁴⁷ The arbitrators are free to evaluate the evidence taken; they do not have to follow strict rules on the taking and evaluating of evidence. In practice, evidence is usually taken, even if it is clearly biased (*e.g.* the testimony of

⁴¹ Sec 590(2) ACCP.

⁴² Sec 585 ACCP; the same is set out in Art 33(5) Vienna Rules 2013.

⁴³ Christian Konrad & Philipp Peters, in *The International Arbitration Review*, 94 (6th edition 2015).

⁴⁴ Veit Öhlberger in Austrian Yearbook on International Arbitration 2011, 65.

⁴⁵ Sec 598 ACCP.

⁴⁶ Sec 19(2) and 24 (2) to (3) Model Law.

⁴⁷ Sec 599(1) ACCP.

an employee or of a person that has an economic interest). The arbitrators then evaluate each testimony under the consideration of possible conflicts of interests and biases.

The arbitral tribunal may seek assistance from state courts for the taking of evidence or the performance of judicial acts it is not authorized to do.⁴⁸ In practice, this may be important if legal assistance by a foreign court or by another authority is required. If evidence is taken by a state court, the parties as well as the arbitrators have the right to participate in the proceedings.⁴⁹

4.5 Interest and Arbitration Costs

The arbitral tribunal has the power to decide on the costs according to its own discretion,⁵⁰ subject to the agreement of the parties. However, in practice, arbitral tribunals almost always apply the costs-follow-the-event principle. The losing party has to bear all costs of the arbitration proceedings and has to reimburse the winning party its reasonable costs of legal representation.

Additionally, the winning party may require the payment of interest in case of a delay of payment. This is, however, a matter of the substantive law applicable to the main agreement.

4.6 Liability of the Arbitrators

Arbitrators can be held liable both civilly and criminally for their actions during arbitration proceedings.⁵¹ They can also be held liable for damages incurred as a result from a resignation from office without reason. There are no provisions that would grant the arbitrators immunity from civil or criminal liability.

Under Austrian case law, arbitrators can only be held civilly liable in respect of an erroneous award if the award has been effectively set aside.⁵²

5. Award

5.1 Content of the Award

The award has to be made in writing and has to be signed by the arbitrators.⁵³ Unless otherwise agreed, the signatures of the majority of the arbitrators suffice, provided that the chairman or another arbitrator records on the award the reason for any omitted signature.⁵⁴ There is no need to set out a dissenting opinion, which in practice rarely happens.

The award has to state the date on which it was issued and the seat of arbitration.⁵⁵ The award has to state the reasons upon which it is based, unless the parties agree otherwise.⁵⁶ There are no atypical requirements that would apply to the rendering of a valid award. The award is then sent to the parties.⁵⁷ As party, it is advisable to request a hard copy with an original signature from each arbitrator.

⁴⁸ Sec 602 ACCP.

⁴⁹ Sec 602 ACCP.

⁵⁰ Sec 609(1) ACCP.

⁵¹ Sec 594(2) ACCP.

⁵² Supreme Court, Feb 17, 2014, docket no. 4Ob197/13v (Austria) ([link](#)).

⁵³ Sec 606(1) ACCP.

⁵⁴ Sec 606(1) ACCP.

⁵⁵ Sec 606(3) ACCP.

⁵⁶ Sec 606(2) ACCP.

⁵⁷ Sec 606(4) ACCP.

5.2 Appeal against an Award

It is only possible to appeal against an award if the parties have agreed to this. The reasons for appeal are generally set out in the parties' agreement or have to be determined by way of contract interpretation. It is, however, very unusual that the parties agree on the possibility to appeal.

5.3 Setting Aside of an Award

Within three months of receipt of an award, each party may apply to set aside the award to the competent state court (generally the Supreme Court).⁵⁸ The reasons for setting aside an award are set out in Sec 611 ACCP and follow Art 34 Model Law. In general, state courts are very restrictive in setting aside awards.

The parties cannot waive the right to seek the annulment of the award. The annulment of the award is seen as the cornerstone of ensuring the fairness of the proceedings. It provides the necessary minimum of state control over arbitration.

It is also possible to obtain a declaration from a state court that an award exists or does not exist. For this, a legal interest is required.⁵⁹ This application is not subject to any statute of limitation.

5.4 Foreign Awards

Austria is a signatory to the New York Convention. In general, foreign awards are enforced without any problems in Austria. State courts have recognized the importance of a universal application of New York Convention and tend to adhere to international arbitration principles in matters of enforcement.

Comparable to domestic awards, foreign awards are enforced within Austria on the basis of the Austrian Enforcement Act.⁶⁰ In order to successfully enforce an award in Austria, the arbitration agreement has to be valid both under the jurisdiction under which the award was issued and under Austrian arbitration law, as set out under Sec 583 ACCP.⁶¹ Since Sec 583 ACCP corresponds with the Model Law, most formal requirements for arbitration agreements will be comparable to Sec 583 ACCP.

The requirement to present the original arbitration agreement according to Art 4 (1)(b) New York Convention only has to be met if specifically requested by the state court.⁶² This provision reflects the general attitude of the Austrian arbitration law to make the enforcement of foreign awards as easy as possible.

Deriving from the European Convention on International Commercial Arbitration 1961, the fact that a foreign award has been set aside in its jurisdiction does not hinder the enforcement of the foreign award in Austria, if the foreign award has been set aside on the ground of lack of arbitrability or due to a violation of public policy.⁶³ Both issues are reviewed independently by the competent state court in Austria.

6. Funding Arrangements

Austrian civil law contains a rather peculiar provision which forbids any lawyer from entering into an agreement under which the client assigns claims to the lawyer regarding which the lawyer is representing his or her client (prohibition of *quota litis*).⁶⁴ This rule applies if a client-counsel relationship is subject to Austrian law.

⁵⁸ Sec 611(4) ACCP; Sec 615 ACCP.

⁵⁹ Jenny Power, *The Austrian Arbitration Act*, 118 (2006).

⁶⁰ Sec 614 ACCP; Power, *supra*, 121.

⁶¹ Sec 614(1) ACCP.

⁶² Sec 614(2) ACCP.

⁶³ Christian Konrad & Philipp Peters in *The International Arbitration Review*, 94 (6th edition 2015).

⁶⁴ Sec 879(2) no. 2 Austrian General Civil Code (AGCC).

Furthermore, under the professional rules of the regional Austrian bar associations, excessive bonuses cannot be validly agreed upon. This restriction applies if the counsel is subject to one of the Austrian bar associations.

There are no specific restrictions to the use of third party funding in arbitration.

7. Future Reforms

Vienna is continuously growing as an arbitration hub. The arbitration community in Austria is well-connected to the Austrian legislative power. In the past, the arbitration community has managed to successfully lobby for the implementation of much needed reforms. These reforms have undoubtedly made Austria a highly recommendable, reliable and cost-efficient place for arbitration. Currently, there are no major future reforms planned.