

GUIDE TO ARBITRATION PLACES (GAP)

AUSTRIA

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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| 1. Law | ● |
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| c. Limited court intervention | ● |
| d. Arbitrator immunity from civil liability | ● |
| 2. Judiciary | ● |
| 3. Legal expertise | ● |
| 4. Rights of representation | ● |
| 5. Accessibility and safety | ● |
| 6. Ethics | ● |
| Evolution of above compared to previous year | ⊞ |
| 7. Tech friendliness | ● |
| 8. Compatibility with the Delos Rules | ● |

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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 any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Austria is one of the world's leading seats of arbitration. It offers a transparent, predictable legal framework with a modern, arbitration-friendly law largely based on the UNCITRAL Model Law 1985. Vienna is a popular neutral jurisdiction and a convenient location for hearings, offering user-friendly infrastructure and arbitration facilities. The Vienna International Arbitral Centre ("**VIAC**"), one of Europe's leading arbitral institutions, has its headquarter in Vienna.

The Austrian court system is arbitration-friendly and experienced in arbitration matters. The Austrian Supreme Court has exclusive jurisdiction in most arbitration-related matters, providing for a specialized forum and fast decisions in a single instance.

Key places of arbitration in the jurisdiction?	Vienna.
Civil law / Common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Confidentiality is not legally prescribed, but it is often agreed upon in separate confidentiality agreements, <i>e.g.</i> , in the arbitration agreement, in arbitration rules or in an ad-hoc agreement concluded after the initiation of the arbitration. Leading scholars argue that arbitration in Austria is by its nature confidential.
Requirement to retain (local) counsel?	Not required.
Ability to present party employee witness testimony?	Yes, there are no restrictions regarding the admissibility or the weight of certain types of evidence.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Both are possible. In the absence of a party agreement, the arbitrators decide on the venue of meetings and/or hearings and on the conduct of remote hearings.
Availability of interest as a remedy?	There are no restrictions regarding the availability of interest as a remedy. Interest is considered a matter of substantive law and not regulated specifically with respect to arbitration proceedings.
Ability to claim for reasonable costs incurred for the arbitration?	Arbitrators have wide discretion with respect to the allocation of costs. All reasonable costs for the pursuit or defence of a claim may be reimbursed. As a general rule, interest on the costs may be claimed.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fee arrangements are not allowed for Austrian attorneys. Other alternative fee arrangements such as success fees are possible. Third-party funding is generally considered permissible under Austrian law and is widely practiced, although it is currently not regulated.
Party to the New York Convention?	Yes.

Party to the ICSID Convention?	Yes.
Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	The default limitation period under Austrian civil law is 30 years. Many claims, however, have shorter limitation periods. Warranty claims are time barred 2 years after the handover of the goods or works. For immoveable objects, the time-bar for warranty claims is 3 years after handover. Damage claims are time-barred 3 years after the claimant became aware of the damage and the liable party; 30 years after the occurrence of the damage all damage claims are time-barred regardless of the knowledge of the damage and the tortfeasor. Contractual performance claims are time-barred 3 years after the due date. A claim for rescission/adjustment of a contract due to error must be claimed 3 years after the conclusion of the contract. Time-bar must be pleaded and is not observed <i>ex officio</i> .
Other key points to note?	The Austrian Supreme Court has exclusive competence for most arbitration-related court proceedings, such as annulment proceedings.
World Bank, Enforcing Contracts: Doing Business score for 2020, if available?	For 2020, Austria has a score of 75.5 and ranks 10 th .
World Justice Project, Rule of Law Index: Civil Justice score for 2024, if available?	For 2024, Austria has a score of 0.74 and ranks 17 th .

ARBITRATION PRACTITIONER SUMMARY

The Austrian arbitration law is embedded in the Fourth Chapter of the Austrian Code of Civil Procedure (“**ACCP**”) in sections 577 to 618 ACCP and is based largely on the UNCITRAL Model Law 1985 (“**ML**”). It applies to all domestic and international arbitration proceedings seated in Austria. With the Arbitration Law Reform Acts of 2006 and 2013, Austria tailored the arbitration provisions of the ACCP to the requirements of a modern arbitration law, underscoring the importance of party autonomy by giving parties wide-ranging flexibility for designing the arbitral process according to their preferences and needs. This flexibility is limited by only a few mandatory provisions.

The Austrian Supreme Court has exclusive competence for most arbitration-related court proceedings, such as for annulment proceedings, limiting court proceedings to one single instance. Austria has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”) and the European Convention on International Commercial Arbitration (“**European Convention**”).

Date of arbitration law?	The arbitration law currently in force is contained in sections 577 to 618 ACCP and was adopted with the Austrian Arbitration Reform Act 2006 (in force as of 1 July 2006; amended with the Austrian Arbitration Reform Act 2013, in force as of 1 January 2014).
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	With certain amendments, it is based on the 1985 version of the ML and follows its structure.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Yes. Arbitration-related matters fall within the competence of the Austrian Supreme Court and a special senate of that court. This ensures consistency and high-quality decisions by specialized judges.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Arbitral tribunals cannot grant <i>ex parte</i> interim measures. Contrary to arbitral tribunals, courts may grant <i>ex parte</i> interim measures both before and during the pendency of arbitration proceedings. <i>Ex parte</i> emergency arbitrations are not available.
Courts’ attitude towards the competence-competence principle?	The competence-competence principle is set forth in the arbitration law and recognized by the courts. Arbitral tribunals have the obligation to decide on their own jurisdiction. Courts may only review the arbitrators’ decision on jurisdiction in subsequent annulment proceedings.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Any decision on jurisdiction and on any part of the merits of the dispute must be made in the form of an arbitral award, which entails a duty of the arbitrators to provide reasons unless otherwise agreed by the parties. The parties may waive the duty to provide reasons. Procedural decisions (e.g., document production, submission deadlines etc.) do not have to provide reasoning.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	In addition to the grounds of the New York Convention for the refusal of enforcement, an award may be set aside if certain conditions for re-opening court proceedings are met, such as in the case of document forgery, perjury or fraud. The arbitrators’ decline of jurisdiction may also be subject to annulment.

Do annulment proceedings typically suspend enforcement proceedings?	No. The party requesting an annulment may at the same time request the suspension of the enforcement. The court may request appropriate security if the suspension is granted.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Within the scope of application of the New York Convention, the prevailing view of legal scholars is that the New York Convention does not leave room for the courts' discretion to recognise and enforce an award annulled at the seat of arbitration. However, courts have enforced awards annulled at the seat of arbitration pursuant to Art. IX of the European Convention.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	The Austrian Supreme Court has confirmed that remote hearings are permissible despite the objection of a party. The order of a remote hearing does not <i>per se</i> affect the recognition or enforceability of an award. The fair treatment of the parties and their right to be heard must always be observed in the specific circumstances of each case.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	There are no restrictions regarding the subjective arbitrability of public bodies having legal personality. If the arbitration agreement is signed by proxies, they need to have a special power of attorney in writing from the authorized representatives of the public body.
Is the validity of blockchain-based evidence recognised?	There are no rules restricting the types of admissible evidence and their weight. Blockchain-based evidence is not explicitly addressed in Austrian procedural law and is treated like any other type of evidence. The evaluation of the weight of the evidence lies within the discretion of the arbitral tribunal.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	The Austrian Supreme Court has not yet addressed this issue. An arbitration agreement is valid if it is contained in an exchange of communications by any means of transmitting messages that provides a record of the agreement. Provided that the parties have actually communicated the agreement to arbitrate to one another, a record of the arbitration agreement on a blockchain should therefore be valid.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	The Austrian Supreme Court has not yet directly addressed this issue. However, the New York Convention requires the party seeking recognition and enforcement to supply either <i>"the duly authenticated original award or a duly certified copy thereof"</i> . According to the Austrian Supreme Court, authentication means a confirmation that the signatures of the arbitrators are authentic. Only a qualified electronic signature issued by a trusted service provider fulfils this prerequisite. Accordingly, the use of blockchain to record the arbitral award does not in itself suffice to qualify the award as an original for the purposes of recognition and enforcement.
Other key points to note?	There are special rules for consumer and employment-related matters. Among others, arbitration agreements can only be concluded after a dispute has arisen. An arbitration agreement

	with consumers or employees must be contained in a separate document. In arbitration-related court proceedings dealing with consumer and employment disputes, the Austrian Supreme Court does not have exclusive jurisdiction.
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JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1. Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

The “new” Austrian arbitration law was introduced with the Arbitration Law Reform Act 2006, which entered into force on 1 July 2006 and is based on the UNCITRAL Model Law 1985 (“ML”). It is contained in the Fourth Chapter of the Austrian Code of Civil Procedure (“ACCP”) in sections 577 to 618 ACCP.¹ The Austrian arbitration law applies to domestic and international arbitration proceedings alike and is not limited to commercial cases, but to all arbitration proceedings having their seat in Austria. Pursuant to section 577(2), (3) ACCP, some provisions dealing mainly with the intervention of the courts also apply when arbitration proceedings are not seated in Austria or when the seat of the arbitration has not yet been determined.²

The differences between the ML and the Austrian arbitration law are, in substance, relatively minor:

- Section 580 ACCP provides that, in the absence of an agreement of the parties, any written communication can be deemed to have been received on the day on which it is delivered either personally to the addressee or to an authorised recipient, or, if this was not possible, when it is otherwise delivered to the corporate seat, legal domicile or ordinary residence of the addressee. The provision is stricter than Article 3 ML, pursuant to which receipt is presumed if a written communication is delivered to the addressee’s place of business, habitual residence or mailing address.
- Section 583(1) ACCP requires that an arbitration agreement is either contained in a written document signed by the parties or in an exchange of communications between the parties provided that the means of communication allows to record the agreement. In contrast to Article 7(3) ML (Option I), the Austrian arbitration law demands a record of the exchange of communications rather than the recording of an orally concluded arbitration agreement.
- In contrast to Article 8 ML, section 584(3) ACCP provides that a court must reject any action in a matter where arbitration proceedings in or outside of Austria are already pending without reviewing the existence or operability of the arbitration agreement. The Austrian arbitration law thus gives absolute priority to pending arbitration proceedings over court proceedings.
- Pursuant to Article 10 ML, the parties are free to determine the number of arbitrators, implying that parties may – even though this will only rarely be the case – also agree on an even number of arbitrators. Under the ACCP, this is not possible: Section 586 ACCP provides that, where the parties have agreed on an even number of arbitrators, these must mandatorily appoint an additional arbitrator as presiding arbitrator.³
- Section 587(8) ACCP defines the criteria to be used by national courts for appointing arbitrators. The Austrian legislator did not adopt the corresponding Article 11(5) ML in full. Courts are not required to consider, when appointing a sole or presiding arbitrator, whether it is advisable to appoint an

¹ Zivilprozessordnung [ZPO] [Code of Civil Procedure] Reichsgesetzblatt [RGL.] No. 113/1895, as amended, [available in English](#) in the Legal Information System of the Republic of Austria (“Rechtsinformationssystem des Bundes”, “RIS”). The RIS contains a collection of the (prevailing German) texts of Austrian laws, most court decisions and the legal rules deduced from these decisions (“Legal Rule”). Wherever these are referred to in the following, the source will be hyperlinked under “available in the RIS” rather than under the full link in order to keep the footnotes short and concise.

² This applies mainly to provisions relating to the crossroads between arbitration proceedings and the intervention of state courts, such as the scope of state-court intervention, the form of the arbitration agreement and the relationship between the arbitration agreement and actions brought before state courts, as well as to pre-arbitral measures such as the constitution of an arbitral tribunal.

³ Christian Hausmaninger in *Kommentar zu den Zivilprozessgesetzen* (Hans W. Fasching & Andreas Konecny eds., 2016) § 586 ZPO para. 34.

arbitrator of a nationality different from those of the parties.⁴ The requirement of independence and impartiality of all arbitrators is, however, not restricted by this provision.

- Contrary to Article 21a ML, the ACCP does not explicitly set out a rule for the commencement of arbitral proceedings. According to Austrian jurisprudence, arbitration proceedings are pending once a statement of claim or any other document initiating proceedings is delivered to the respondent and the respondent therefore is informed about the proceedings (equivalent to the rules governing pendency of actions in state-court proceedings).⁵
- Section 609 ACCP sets forth criteria for the allocation of costs, which the ML does not. Pursuant to section 609 ACCP, unless otherwise agreed by the parties, the arbitral tribunal shall consider the circumstances of the case and in particular the outcome of the proceedings when allocating the costs of the arbitration.
- Section 611 ACCP provides for slightly modified annulment grounds. Pursuant to section 611(2) number 1 ACCP, the arbitral award may also be set aside if the arbitral tribunal has declined jurisdiction despite the existence of an arbitration agreement. Pursuant to section 611(2) number 5 ACCP, an arbitral award may only be set aside when arbitral proceedings were conducted in a manner that conflicts with the fundamental values of the Austrian legal system (*ordre public*). In contrast to Article 34(2) (iv) ML, the conduct of the proceedings contrary to the agreement of the parties or a mandatory provision of the arbitration law is not an annulment ground. Section 611(2) number 6 ACCP allows, in addition to the annulment grounds of the ML, to set aside an award if certain conditions for re-opening court proceedings are met, such as in the case of document forgery, perjury or fraud.
- Contrary to Article 34(4) ML, under the ACCP, the court may not suspend the setting aside proceedings in order to give the arbitral tribunal an opportunity to eliminate the ground for setting aside the award.
- Contrary to Article 36 ML, section 614 ACCP does not list the grounds allowing to refuse the recognition and enforcement of foreign arbitral awards, but refers to the provisions of “international law”. This means, in practice, that the recognition and enforcement of foreign arbitral awards in Austria is primarily governed by the New York Convention and may be supplemented by other international law instruments such as the European Convention.
- The ACCP contains specific rules for consumer and employment-related arbitration proceedings in sections 617 and 618 ACCP. Among others, arbitration agreements for such matters can only be concluded within strict boundaries, *i.e.*, only after a dispute has arisen and only if the arbitration agreement is contained in a separate document not containing other agreements.⁶ In addition, sections 617, 618 ACCP set out special jurisdictional rules for employment and consumer disputes.⁷ In practice, the highly onerous rules for consumer and employment arbitration entail that arbitration has little practical significance in these areas of law.

1.2. When was the arbitration law last revised?

The Austrian arbitration law was fundamentally revised with the Austrian Arbitration Law Reform Act 2006, which entered into force on 1 July 2006 (“*Schiedsrechts-Änderungsgesetz 2006*”), and was again revised with

⁴ Christian Hausmaninger in *Zivilprozessgesetze* § 587 ZPO para. 178 (n3).

⁵ Christian Hausmaninger in *Zivilprozessgesetze* § 584 ZPO para. 35 (n3); Austrian Supreme Court, 29 June 2022, 7 Ob 79/22a, p. 12, [available in the RIS](#).

⁶ For employment-related matters, see section 50(2) of the Labour and Social Courts Act; *Arbeits- und Sozialgerichtsgesetz [ASGG]* [Labour and Social Courts Act] *Bundesgesetzblatt [BGBl.]* No. 104/1985, as amended, [available in the RIS](#).

⁷ For expert determination agreements concluded with consumers, see Austrian Supreme Court, 23 November 2023, 5 Ob 167/23d, p. 13, [available in the RIS](#).

the Austrian Arbitration Law Reform Act 2013, which entered into force on 1 January 2014 (“Schiedsrechts-Änderungsgesetz 2013”). The latest reform established the exclusive competence of the Austrian Supreme Court for most arbitration-related court proceedings, such as proceedings in support of the constitution of an arbitral tribunal, the challenge of arbitrators and annulment proceedings. Consumer and employment-related disputes pursuant to sections 617, 618 ACCP are excluded from the exclusive competence of the Austrian Supreme Court and are subject to special jurisdictional provisions.⁸

2. The arbitration agreement

2.1. How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The ACCP does not determine the law applicable to the arbitration agreement.⁹ The Austrian Supreme Court applies the conflict-of-laws rule contained in Article V(1) lit a of the New York Convention to determine the law applicable to the arbitration agreement also outside the context of enforcement proceedings. Accordingly, the Austrian Supreme Court applies the law selected in a party agreement.¹⁰ A choice of law may also be made implicitly. A choice-of-law-clause contained in the main contract generally extends to the arbitration agreement contained therein.¹¹ While the Austrian Supreme Court has recognized the separate legal nature of an arbitration agreement, it considered the choice of law contained in the main contract as an indication of an implied choice of the law governing the arbitration agreement. However, in this context, the Austrian Supreme Court emphasised the necessity to decide on a case-by-case basis.¹² In the absence of a choice of law, the law of the seat of the arbitration governs the arbitration agreement.¹³

2.2. In the absence of an express designation of a ‘seat’ in the arbitration agreement, how do the courts deal with references therein to a ‘venue’ or ‘place’ of arbitration?

References to the “place of arbitration” are generally understood as references to the legal seat of the arbitration.¹⁴ Section 595(2) ACCP distinguishes between the legal seat of the arbitration and the location where it holds hearings or other meetings. In the absence of a contrary agreement of the parties, the arbitral tribunal may hold hearings and other acts of procedure at a different location than the seat even without prior authorization from the parties.¹⁵ The terms “seat” and “place” of arbitration are generally used interchangeably.¹⁶ The expression “venue of the arbitration” is less frequently used. However, in general, it is also understood as a reference to the legal seat of the arbitration and not to the place where hearings are to be held.¹⁷ The question will be treated as a matter of contract interpretation and will be decided by the courts on a case-by-case basis.

⁸ See explanatory remarks to the government proposal, ErläutRV 2322 BlgNR 24. GP p. 1, available at: https://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_02322/index.shtml.

⁹ Section 603 ACCP only deals with the determination of the law applicable to the merits of the dispute (*lex causae*).

¹⁰ Austrian Supreme Court, 19 December 2018, 3 Ob 153/18y, pp. 23-24, [available in the RIS](#); Christian Hausmaninger in *Zivilprozessgesetze* § 611 ZPO para. 89 (n3); ErläutRV 1158 BlgNR 22. GP, p. 27, available at: https://www.parlament.gv.at/PAKT/VHG/XXII/I/I_01158/index.shtml.

¹¹ Austrian Supreme Court, 19 December 2018, 3 Ob 153/18y, p. 23 (n10); Austrian Supreme Court, 15 May 2019, 18 OCg 6/18h, pp. 15-16, [available in the RIS](#).

¹² Austrian Supreme Court, 19 December 2018, 3 Ob 153/18y, p. 23 (n10); For a detailed discussion, see Austrian Supreme Court, 23 June 2015, 18 OCg 1/15v, pp. 14 *et seqq.*, [available in the RIS](#); Austrian Supreme Court, 15 May 2019, 18 OCg 6/18h, p. 16 (n12); Austrian Supreme Court, 2 March 2021, 18 OCg 10/19y, pp. 35-36, [available in the RIS](#).

¹³ Austrian Supreme Court, 23 June 2015, 18 OCg 1/15v, pp. 15-16 (n12) with further references; Austrian Supreme Court, 19 December 2018, 3 Ob 153/18y, p. 23 (n10).

¹⁴ See, for example, Austrian Supreme Court, 16 December 2013, 6 Ob 43/13m, [available in the RIS](#); Austrian Supreme Court, 30 March 2009, 7 Ob 266/08f, [available in the RIS](#).

¹⁵ See explanatory remarks to the government proposal, ErläutRV 1158 BlgNR 22. GP p. 5 (n10); Christian Hausmaninger in *Zivilprozessgesetze* § 595 ZPO paras. 32, 61-65 (n3).

¹⁶ See, for example, Article 20 ML, Article 18 ICC Rules and Article 25 Vienna Rules, which refer to the “place of arbitration”.

¹⁷ Austrian Supreme Court, 25 June 1992, 7 Ob 545/92, p. 3, [available in the RIS](#).

2.3. Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Though not explicitly stipulated in the ACCP, the doctrine of the separability of arbitration agreements is widely recognized in Austria.¹⁸ Austrian courts have generally considered the arbitration agreement to be separate from the main contract, but have held that the interpretation of the intention of the parties may lead to a different result.¹⁹ In case of a mutually agreed termination of an agreement containing an arbitration agreement, the Austrian Supreme Court has considered the arbitration agreement equally terminated.²⁰

2.4. What are the formal requirements (if any) for an enforceable arbitration agreement?

Section 583 ACCP determines that the arbitration agreement needs to be in writing, either in a document signed by the parties or in written exchange of communications (letters, faxes, emails or other means of communication) which provides a record of the agreement. Section 583(2) ACCP allows the conclusion of an arbitration agreement by reference. Where a contract refers to a document containing an arbitration clause, this is sufficient to constitute an arbitration agreement if *"the reference is such that it incorporates the arbitration agreement in the contract by reference,"* i.e., if it is determined to be an integral part of the contract. The question as to whether the arbitration clause is validly incorporated into the main agreement by reference is governed by the applicable substantive law.²¹ Pursuant to section 581(1) ACCP, the arbitration agreement must identify the parties and the legal relationship to which it applies and must express the parties' intention to submit disputes to arbitration. The Austrian Supreme Court has consistently adopted a robust pro-arbitration (*"in favorem validitatis"*) approach when interpreting and determining the validity and the scope of arbitration agreements.²²

At the stage of recognition and enforcement of an award, consistent with the most-favoured-nation approach of Article VII(1) NYC, an arbitration agreement is considered valid if it either meets the form requirements of Article II of the NYC or the form requirements pursuant to section 614 ACCP.²³ Section 614(1) ACCP provides that the arbitration agreement must cumulatively comply with the form requirements of section 583 ACCP and "the law applicable to the arbitration agreement". Compliance with the form requirements of section 583 ACCP alone is not sufficient for recognition and enforcement in Austria.²⁴

If the arbitration agreement is concluded by proxies, the power of attorney must comply with the form requirements of the law applicable to it.²⁵ If Austrian law is applicable, the power of attorney issued by entrepreneurs in the exercise of their business needs to comply with the form requirements of

¹⁸ Christian Hausmaninger in *Zivilprozessgesetze* § 581 ZPO paras. 98-113 (n3); Christian Koller in *Schiedsverfahrensrecht I* (Christoph Liebscher et al. eds., 2011) paras. 3/183-184; Katharina Plavec in *ZPO-ON* (Georg E. Kodek & Paul Oberhammer eds., 2023) § 581 ZPO para. 23.

¹⁹ Austrian Supreme Court, 23 June 2015, 18 OCg 1/15v, p. 13 (n12) with further references.

²⁰ Austrian Supreme Court, 29 April 2003, 1 Ob 22/03x, [ecolex 2003/341](#), [available in the RIS](#); Austrian Supreme Court, 15 May 2019, 18 OCg 6/18h, [available in the RIS](#); Austrian Supreme Court, 22 September 1994, 2 Ob 566/94, [available in the RIS](#); Austrian Supreme Court, 6 September 1990, 6 Ob 572/90, [available in the RIS](#); Austrian Supreme Court, 18 April 1985, 7 Ob 551/85, [available in the RIS](#); Austrian Supreme Court, 16 June 1982, 1 Ob 628/82, [available in the RIS](#); Austrian Supreme Court, 10 April 2003, 8 Ob 24/03t, [available in the RIS](#); Legal Rule RS0045295 [available in the RIS](#); Austrian Supreme Court, 17 April 1996, 7 Ob 2097/96z, [available in the RIS](#); Austrian Supreme Court, 28 June 1977, 4 Ob 523/77, JBI 1979, 42; Legal Rule RS0045108, [available in the RIS](#); Austrian Supreme Court, 21 April 2004, 9 Ob 39/04g, [available in the RIS](#); Christian Koller in *Schiedsverfahrensrecht I* para. 3/189-190 (n18).

²¹ Christian Hausmaninger in *Zivilprozessgesetze* § 583 ZPO paras. 68-76 (n3).

²² Christian Koller in *Schiedsverfahrensrecht I* para. 3/246 (n18); Austrian Supreme Court, 22 February 2007, 3 Ob 281/06d, [available in the RIS](#); Austrian Supreme Court, 29 April 2003, 1 Ob 22/03x (n20); Austrian Supreme Court, 17 May 2002, 7 Ob 67/01f, [available in the RIS](#); Austrian Supreme Court, 12 September 2001, 4 Ob 37/01x, [available in the RIS](#); Austrian Supreme Court, 28 November 2000, 1 Ob 126/00m, [available in the RIS](#); Austrian Supreme Court, 5 May 1998, 3 Ob 2372/96m, [available in the RIS](#); Austrian Supreme Court, 28 September 2022, 18 ONc 1/22z, pp. 4-5, [available in the RIS](#).

²³ Thomas Garber & Christian Koller in *Kommentar zur Exekutionsordnung* (Peter Angst & Paul Oberhammer eds., 2015) Vor § 79 EO para. 609.

²⁴ Thomas Garber & Christian Koller in *Kommentar zur Exekutionsordnung* Vor § 79 EO para. 612 (n23).

²⁵ Christian Koller in *Schiedsverfahrensrecht I* paras. 3/157-3/161 (n18).

section 583 ACCP but does not need to contain an express authorization to conclude arbitration agreements.²⁶ If the power of attorney is issued by persons not qualifying as entrepreneurs, it must comply with the form requirements of section 583 ACCP and, additionally, expressly mention the power to conclude the arbitration agreement.²⁷

2.5. To what extent, if at all, can a third-party to the contract containing the arbitration agreement be bound by said arbitration agreement?

In principle, only signatories are bound to the arbitration agreement. In certain circumstances, the arbitration agreement also applies to third parties. Legal successors of a party, both in cases of universal succession (including the death of a party or corporate succession through, *e.g.*, mergers or corporate divisions) and singular succession (*e.g.*, the assignment of a contract or a receivable) are bound by the arbitration agreement.²⁸ In addition, it is established jurisprudence that arbitration agreements extend to disputes relating to the rights of third-party beneficiaries.²⁹ According to a decision of the Austrian Supreme Court, the same applies to contracts with protective effects in favour of third parties (“Vertrag mit Schutzwirkungen zugunsten Dritter”).³⁰ Under certain circumstances, arbitration agreements may also bind insolvency administrators.³¹ As regards corporate relationships, arbitration agreements extend to the partners in a partnership (“Personengesellschaft”) only exceptionally if this can be derived from the interpretation of the intention of the parties.³² Shareholders of corporations (“Kapitalgesellschaften”) are generally not bound by arbitration agreements entered into by the corporation, except in very rare cases of direct liability of shareholders. This may, very exceptionally, occur in case of the abuse of the corporate structure.³³

2.6. Restrictions to arbitrability

2.6.1. As relate to specific domains (such as anti-trust, employment law etc.)

Austrian arbitration law defines objective arbitrability broadly and contains few exceptions. Pursuant to section 582(1) ACCP, any claim involving an economic interest (“vermögensrechtlicher Anspruch”) that is subject to the jurisdiction of the courts of law may be referred to arbitration. The Austrian legislator understood the notion of economic interest very broadly.³⁴ In addition, claims not involving an economic interest are arbitrable if a settlement may be validly concluded on the subject-matter of the dispute. Criminal, insolvency and public law proceedings are not arbitrable.³⁵ In addition, section 582(2) ACCP lists areas that are reserved for the jurisdiction of state courts for policy reasons, *such as* family law, certain contracts subject to the Tenant Act (“Mietrechtsgesetz”) or the Non-Profit Housing Act (“Wohnungsgemeinnützigkeitsgesetz”).

Sections 617 and 618 ACCP contain substantial restrictions to the conclusion of arbitration agreements in consumer and employment disputes. However, consumer and employment matters are arbitrable.

In a recent landmark decision, the Austrian Supreme Court decided on the validity of an arbitration agreement in a shareholder agreement.³⁶ In order to guarantee shareholders their right of a fair trial and

²⁶ Austrian Supreme Court, 17 May 2002, 6 Ob 195/17w, *ecolex* 2018/315.

²⁷ Section 1008 ACC; Christian Hausmaninger in *Zivilprozessgesetze* § 583 ZPO paras. 85-90 (n3).

²⁸ Christian Koller in *Schiedsverfahrensrecht I* para. 3/295-3/297 (n18).

²⁹ Christian Koller in *Schiedsverfahrensrecht I* para. 3/304 (n18).

³⁰ Austrian Supreme Court, 20 April 2021, 4 Ob 36/21d, [available in the RIS](#).

³¹ Christian Koller in *Schiedsverfahrensrecht I* para. 3/307-3/310 (n18).

³² Christian Koller in *Schiedsverfahrensrecht I* para. 3/311 (n18).

³³ Christian Koller in *Schiedsverfahrensrecht I* para. 3/311-3/318 (n18).

³⁴ ErläutRV 1158 BlgNR 22. GP, p. 8 (n10).

³⁵ Christian Hausmaninger in *Zivilprozessgesetze* § 582 ZPO paras. 30-48 (n3).

³⁶ Austrian Supreme Court, 03 April 2024, 18 OCg 3/22y, [available in the RIS](#). See Brian Gabriel-Oiwoh & Philipp Peters, *The Crystal Standard: Quo Vadis for the Arbitrability of Corporate Disputes in Austria?*, Kluwer Arbitration Blog post dated 9 September 2024, available at: <https://arbitrationblog.kluwerarbitration.com/2024/09/09/the-crystal-standard-quo-vadis-for-the-arbitrability-of-corporate-disputes-in-austria/>.

right to be heard, they must have consented to the arbitration agreement. Further, the shareholders must be granted participation rights in the arbitration agreement; this includes, in particular, the involvement in the constitution of the arbitral tribunal. The Austrian Supreme Court ruled that if these minimum requirements are not expressly set out in the arbitration agreement, the dispute is not arbitrable.³⁷ Therefore, arbitration agreements concerning shareholder disputes must be carefully drafted in order to be valid. The VIAC will soon provide a specific model arbitration clause that corresponds to the Supreme Court's requirements.³⁸

2.6.2. As relate to specific persons (i.e., State entities, consumers etc.)

Austrian law contains no restrictions regarding subjective arbitrability. Any natural or juridical persons having the capacity to be a party to legal proceedings may validly enter into arbitration agreements and be parties to arbitral proceedings.³⁹ This also applies to juridical persons constituted under public law.⁴⁰ Consumers may validly enter into arbitration agreements in relation to consumer disputes, but subject to considerable restrictions: Pursuant to section 617 ACCP, an arbitration agreement involving a consumer is only valid if it is concluded in a separate document after the dispute has arisen. Foundations ("Privatstiftungen") and minority shareholders of corporations are, in certain circumstances, considered consumers.⁴¹ The same restrictions apply to employment-related matters.⁴²

3. Intervention of domestic courts

3.1. Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Pursuant to section 584 ACCP, the Austrian courts are bound to decline jurisdiction if there is an arbitration agreement covering the dispute, provided that the defendant timely objects to the jurisdiction of the court by invoking the arbitration agreement. The court may only exercise jurisdiction if it finds that the arbitration agreement is non-existent or inoperable.⁴³ Pursuant to section 584(1) ACCP, the pendency of court proceedings does not preclude the commencement of subsequent arbitration proceedings and the issuance of an arbitral award in these proceedings.

Pursuant to section 584(3) ACCP, courts must, even when the opposing party does not raise an objection, *ex officio* decline jurisdiction without any examination of the arbitration agreement if arbitral proceedings are already pending. In this scenario, the court may therefore not examine if there is a valid arbitration agreement.⁴⁴ Exceptionally, this rule does not apply when the jurisdiction of the arbitral tribunal has been

³⁷ Austrian Supreme Court, 03 April 2024, 18 OCg 3/22y, para. 78 (n37). Although scholars agree generally that the tribunal must grant the respective minimum procedural requirements, they are critical of the classification of the issue as one of arbitrability, see Christian Koller, *Anmerkung zu 18 OCg 3/22y*, *ecolex* 2024/337, pp. 594-596; Martin Trenker, *Schiedsfähigkeit von Beschlussmängelstreitigkeiten nach 18 OCg 3/22y*, *NZ* 2024/87, pp. 286-304; Lukas Wedl, *Neues zur Schiedsfähigkeit von gesellschaftsrechtlichen Beschlussmängelstreitigkeiten*, *RdW* 2024/332, pp. 458-464; Tim Kirchmayr & Florian Laher, *Die Personengesellschaft als Prozessgegnerin für Beschlussmängelklagen im Schiedsverfahren (18 OCg 3/22y)*, *wbl* 2025 [in print].

³⁸ Soon available at: <https://www.viac.eu/en/arbitration/arbitration-clause-vienna-rules-2021>.

³⁹ Christian Koller in *Schiedsverfahrensrecht I* para. 3/131 (n18).

⁴⁰ Christian Koller in *Schiedsverfahrensrecht I* para. 3/135 (n18).

⁴¹ Michael Nueber in *Kommentar zur ZPO* (Walter Rechberger & Thomas Klicka eds., 2019) § 617 ZPO para. 2; Austrian Supreme Court, 24 June 2010, 6 Ob 105/10z, [available in the RIS](#).

⁴² ErläutRV 1158 BlgNR 22. GP, pp. 8-9 (n10).

⁴³ Gerold Zeiler, *Austrian Arbitration Law* (2016) para. 584-5; Alice Fremuth-Wolf in *Arbitration Law of Austria: Practice and Procedure* (Stefan Riegler et al. eds., 2007) Section 584 para. 24. In the legal literature, diverging views are expressed as to whether the court has a duty to reject the claim *in limine litis* (i.e., prior to the initiation of the proceedings) and *ex officio* (without an objection of the respondent) or whether the parties should be given an opportunity to waive the arbitration agreement by failing to invoke the arbitration agreement (see Gerold Zeiler, *Austrian Arbitration Law* para. 584-4 (2016) and the references therein to the authors arguing in favour and against this view); impecuniosity can be a reason for the inoperability or termination of the agreement, see the Austrian Supreme Court, 4 May 2022, 18 OCg 1/22d, [available in the RIS](#).

⁴⁴ Christian Hausmaninger in *Zivilprozessgesetze* § 584 ZPO para. 31 (n3).

challenged in a timely manner and a decision of the arbitral tribunal on its jurisdiction cannot be obtained *"within a reasonable period of time"* (section 584(3) ACCP). The pendency of the arbitral proceedings ends either by the rendering of a final award or order of the arbitral tribunal terminating the proceedings according to sections 608(1) and (2) ACCP.⁴⁵

3.1.1. If the place of the arbitration is inside of the jurisdiction?

Section 584 ACCP does not distinguish between arbitration proceeding having the seat in Austria or outside of Austria. The courts must decline jurisdiction if there is a valid arbitration agreement or if arbitration proceedings are pending.

3.1.2. If the place of the arbitration is outside of the jurisdiction?

Section 577(2) ACCP explicitly provides that this rule also applies if the seat of arbitration is not in Austria or has not yet been determined.

3.2. How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

It is broadly acknowledged that arbitral tribunals seated in Austria have the power to issue anti-suit injunctions.⁴⁶ The authors are familiar with one case in which an arbitral tribunal with the seat in Austria has issued an anti-suit injunction concerning court proceedings outside the EU based on the section 593 ACCP.⁴⁷ There is no published Austrian court decision dealing with an injunction by arbitrators enjoining parties to refrain from initiating, halting or withdrawing litigation proceedings.⁴⁸

3.3. On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

Section 578 ACCP provides for a restricted role of the domestic courts in arbitration-related matters. In accordance with that provision, *"the court may only act (...) if so provided in this Chapter [i.e., the provisions of the ACCP dealing with arbitration]"*. Court actions permissible in relation to arbitrations seated outside of Austria are restricted to (i) the examination of the existence and the operability of an arbitration agreement or of the pendency of arbitral proceedings when a court action is initiated in a matter (arguably) covered by an arbitration agreement (section 584(1),(3) ACCP), (ii) the issuance of interim measures prior or during the pendency of arbitral proceedings (section 585 ACCP), (iii) the enforcement of interim measures issued by arbitral tribunals (also) seated outside of Austria (section 593(3)-(6) ACCP), (iv) support of an arbitral tribunal with a *"judicial act for which the arbitral tribunal does not have authority"* including, e.g., assistance related to summoning of witnesses, ordering production of documents or, arguably, requesting a preliminary ruling by the Court of Justice of the EU,⁴⁹ (v) proceedings relating to an action for a declaration of the existence or non-existence of an arbitral award (section 612 ACCP) and (vi) the recognition and enforcement of foreign arbitral awards (section 614 ACCP). The competence of Austrian courts to issue interim measures is limited to those types of measures explicitly enumerated in the Enforcement Act (*"Exekutionsordnung"*) and does not include

⁴⁵ If the Arbitral Tribunal has not been constituted, an order of the administering institution might be required to terminate the pendency of the proceedings; see Austrian Supreme Court, 29 June 2022, 7 Ob 79/22a, pp. 14-15, [available in the RIS](#).

⁴⁶ Christian Hausmaninger in *Zivilprozessgesetze* § 593 ZPO para. 58/1 (n3).

⁴⁷ ICC Case (unpublished).

⁴⁸ Note in this respect Case C-536/13, *Gazprom OAO v. Republic of Lithuania*, where it was found that an anti-suit injunction issued by an arbitral tribunal was compatible with Brussels I Regulation; decision available at <https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX%3A62013CJ0536>.

⁴⁹ See Alexander Petsche in *Arbitration Law of Austria* Section 602 para. 13 (n43); for a general discussion see also Siegfried Elsing, *References by Arbitral Tribunal to the European Court of Justice for Preliminary Rulings* in *Austrian Yearbook on International Arbitration* 2013 (Christian Klausegger et al. eds., 2013).

anti-suit injunctions or anti-arbitration injunctions.⁵⁰ Austrian courts therefore have no competence to issue anti-suit injunctions or anti-arbitration injunctions in the context of arbitral proceedings, regardless of whether the arbitral proceedings are seated in or outside of Austria.

4. The conduct of the proceedings

4.1. Can parties retain foreign counsel or be self-represented?

Parties are free to choose counsel in arbitral proceedings, including foreign counsel, and may also choose to be self-represented. In line with other arbitration laws and institutional rules,⁵¹ the mandatory section 594(3) ACCP stipulates that “*parties may be represented or advised by persons of their choice.*” This means that parties have wide-ranging freedom for choosing their representatives or advisors.⁵² Agreements that prohibit legal representation generally or by certain (groups of) people are not permissible. Arbitrators may not require parties to obtain legal representation.⁵³ This does, however, not apply to arbitration-related state-court proceedings where parties generally have to be represented by Austrian counsel. Established European lawyers may act as party representatives in such proceedings if they have passed a specific qualification exam. If they have not passed such exam, they may only represent together with a qualified Austrian lawyer (“*Einvernehmensrechtsanwalt*”).⁵⁴

4.2. How strictly do courts control arbitrators’ independence and impartiality? For example: does an arbitrator’s failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

Section 588(2) ACCP provides that “[a]n arbitrator may only be challenged if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not fulfil the conditions agreed to by the parties.” The standard is objective.⁵⁵ It is decisive whether circumstances exist that, from the point of view of a reasonable third party with knowledge of the relevant facts, could give rise to doubts as to the arbitrator’s independence or impartiality. The appearance of bias is sufficient.⁵⁶ In assessing the arbitrators’ independence and impartiality, the Austrian Supreme Court routinely makes reference to the IBA Guidelines on Conflicts of Interest in International Arbitration (“**IBA Guidelines**”).⁵⁷ When assessing an arbitrator’s

⁵⁰ Section 378 *et seq.* Austrian Enforcement Act. An order by a court of an EU Member State prohibiting a person from initiating or continuing proceedings before the courts of another EU Member State on the grounds that such proceedings violate an arbitration agreement was found to be incompatible with EU law and, in particular, with the principle of mutual trust between the courts of the Member States.; see Case C-185/07 Allianz SpA, Generali Assicurazioni Generali SpA v West Tankers Inc, available at: <https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX%3A62007CC0185>; on the issue of courts’ anti-suit / anti-arbitration injunctions under Austrian law see Martin Weber in *Handbuch Schiedsrecht* (Dietmar Czernich et al. eds., 2018) para. 14.19; Christian Konrad in *Schiedsverfahrensrecht I* para. 2-78 (n18); Alice Fremuth-Wolf in *Arbitration Law of Austria* Section 584 para. 54 (n43).

⁵¹ See, for example, section 36 English Arbitration Act 1996; section 1042 German Code of Civil Procedure; section 16 US Uniform Arbitration Act 2000; section 63 Hong Kong Arbitration Ordinance; Article 18.1 LCIA Rules 2020; Article 13 Vienna Rules 2021; Article 26(4) ICC Rules 2021; Article 13.7 HKIAC Rules 2024.

⁵² Christian Zib in *Zivilprozessgesetze* § 27 ZPO para. 58 (n3); Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 109 (n3); ErläutRV 1158 BlgNR 22. GP p. 17 (n10).

⁵³ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 109 (n3); Franz T. Schwarz in *Schiedsverfahrensrecht II* (Christoph Liebscher et al. eds., 2016) para. 8/162.

⁵⁴ Europäisches Rechtsanwaltsgesetz [EIRAG] [Code for European Lawyers] Bundesgesetzblatt [BGBl.] No. 27/2000, as amended, sections 5, 14, [available in the RIS](#).

⁵⁵ Austrian Supreme Court, 15 May 2019, 18 ONc 1/19w, p. 8, [available in the RIS](#).

⁵⁶ See, for example, Austrian Supreme Court, 19 April 2016, 18 ONc 3/15h, pp. 10-11, [available in the RIS](#); Austrian Supreme Court, 15 May 2019, 18 ONc 1/19w, p. 8 (n55).

⁵⁷ Austrian Supreme Court, 15 May 2019, 18 ONc 1/19w, p. 9 (n55) with further references, Austrian Supreme Court, 23 July 2020, 18 ONc 1/20x, p. 12, [available in the RIS](#).

independence and impartiality, the Austrian Supreme Court applies a strict standard⁵⁸ that is comparable to the standard applied by leading arbitral institutions such as the International Court of Arbitration of the ICC.

The Austrian Supreme Court has set out its approach regarding the independence and impartiality of arbitrators in two decisions. In one case, the arbitrator and one of the parties' counsel were co-counsel in another unrelated arbitration.⁵⁹ The arbitrator was personally involved in handling the second proceeding jointly with the party representative in the first proceeding. In the assessment of the Austrian Supreme Court this fact alone meant that there were not merely peripheral contacts between arbitrator and counsel. According to the Austrian Supreme Court, the contacts led to a "*degree of familiarity*" which is not compatible with an arbitrator's mandate and granted the challenge.

In another judgment,⁶⁰ the Austrian Supreme Court addressed professional contacts between arbitrators and party representatives. The arbitrator and party representatives in an arbitration had several professional contacts due to the organization of arbitration-related events and the joint membership in arbitral institutions. The Austrian Supreme Court held that the usual involvement of arbitrators and counsel in professional circles does not in itself justify doubts regarding the arbitrator's independence and impartiality.⁶¹

An arbitrator's failure to disclose may as such not justify a challenge if the circumstance not disclosed does not in itself constitute a sufficient ground for a challenge.⁶² However, the Austrian Supreme Court has held that, depending on the circumstances of the case, the violation of a duty to disclose may be an indication of bias.⁶³ Doubts about the independence and impartiality of an arbitrator may be stronger the more severe the non-disclosure is.⁶⁴ The specific circumstances of the case must raise the suspicion that the arbitrator deliberately concealed the circumstance in order to avoid a possible challenge. On the other hand, the more an arbitrator could consider the circumstance as insignificant, the less likely the non-disclosure justifies a challenge.⁶⁵

In the absence of a party agreement on the challenge procedure, the challenging party must bring a written challenge before the arbitral tribunal within four weeks after being notified about the composition of the arbitral tribunal or after becoming aware of the ground on which the challenge is based.⁶⁶ If a challenge brought to the arbitral tribunal or made in accordance with the agreed procedure is unsuccessful, the challenge may, within four weeks from the decision rejecting the challenge, be brought to the Austrian Supreme Court (section 589(3) ACCP). The right of a party to appeal to the Austrian Supreme Court cannot be excluded by a party agreement.

⁵⁸ Austrian Supreme Court, 23 July 2020, 18 ONc 3/20s, p. 5, [available in the RIS](#); Austrian Supreme Court, Legal Rule RS0045949 (T10), [available in the RIS](#).

⁵⁹ Austrian Supreme Court, 15 May 2019, 18 ONc 1/19w (n55).

⁶⁰ Austrian Supreme Court, 23 July 2020, 18 ONc 1/20x (n57).

⁶¹ Austrian Supreme Court, 23 July 2020, 18 ONc 1/20x-9 (n57); Austrian Supreme Court, 15 May 2019, 18 ONc 1/19w (n55).

⁶² Austrian Supreme Court, 23 July 2020, 18 ONc 1/20x-9 (n57).

⁶³ Christian Hausmaninger in *Zivilprozessgesetze* § 588 ZPO para. 67/1 (n3); Austrian Supreme Court, 19 April 2016, 18 ONc 3/15h (n56); Austrian Supreme Court, 13 November 2014, 18 ONc 5/14a, SZ 2014/105 = JBI 2015, 122 = ecolex 2015/111, [available in the RIS](#); Austrian Supreme Court, 5 August 2014, 18 ONc 1/14p, [available in the RIS](#).

⁶⁴ Austrian Supreme Court, 5 August 2014, 18 ONc 1/14p, p. 27 (n63); Austrian Supreme Court, 19 April 2016, 18 ONc 3/15h, pp. 8-9 (n56).

⁶⁵ Austrian Supreme Court, 5 August 2014, 18 ONc 1/14p, pp. 27, 29 (n63).

⁶⁶ Section 589(2) ACCP.

4.3. On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of ad hoc arbitration)?

Section 587 ACCP sets out the conditions under which the courts may assist in the constitution of an arbitral tribunal.⁶⁷ Pursuant to section 587(1) ACCP, the parties' agreement is primarily decisive, which ensures that agreed rules prevail over the dispositive rules of section 587(2)-(9) ACCP.

Where the parties did not agree on the procedure for appointing an arbitral tribunal consisting of three arbitrators, the constitution of the arbitral tribunal is triggered by a written request from one party to the other party to appoint an arbitrator. The deadline for complying with such a request is four weeks.⁶⁸ The two party-appointed arbitrators appoint the presiding arbitrator. When a party fails to appoint an arbitrator within four weeks, or when the party-appointed arbitrators fail to appoint the presiding arbitrator within four weeks, the Austrian Supreme Court makes default appointments upon the application of a party (section 587(2) number 4 ACCP). If the parties have agreed on a sole arbitrator and the parties fail to agree on the arbitrator within four weeks after a written request from a party, the sole arbitrator may be appointed by the Austrian Supreme Court upon request from one of the parties (section 587(2) number 1 ACCP).

If the parties have agreed on the procedure for appointing arbitrators, the Austrian Supreme Court may, in the absence of a party agreement securing the constitution of the arbitral tribunal, make default appointments upon the application from a party if either (i) one party does not comply with the agreed procedure, (ii) the parties or arbitrators cannot find an agreement according to this procedure, or (iii) a third party, e.g., an appointing authority, does not fulfil its task within three months from a written request from a party (section 587(3) ACCP).⁶⁹

The Austrian Supreme court may make default appointments in multi-party proceedings if, in the absence of a party agreement securing the constitution of the arbitral tribunal, several parties fail to make a joint appointment within four weeks after receiving a written request from a party (section 587(5) ACCP).

Section 587(6) ACCP contains a "catch-all provision" providing that the Austrian Supreme Court may make a substitute appointment in all cases in which the appointment of arbitrators fails, within four weeks from the written request by a party, for other reasons than those enumerated in the preceding paragraphs of section 587 ACCP or when the agreed appointment procedure does not lead to the appointment within a "*reasonable period of time*".

When appointing an arbitrator, the court has to take into consideration any qualifications of the arbitrator agreed by the parties and has to ensure the appointment of an independent and impartial arbitrator.⁷⁰ If the appointment of the arbitrator is made in accordance with the applicable rules despite the initiation of court proceedings and if this is demonstrated to the court prior to its decision on the substitute appointment, the action aiming at a substitute appointment shall be dismissed by the court (section 587(7) ACCP).

4.4. Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider ex parte requests?

The arbitrators' powers to issue interim measures do not exclude the competence of the courts to issue interim measures. Pursuant to section 585 ACCP, a court may, at the request of a party, grant interim or protective measures before and even during pending arbitration proceedings. Contrary to arbitral tribunals,

⁶⁷ In such proceedings, the validity and scope of the (alleged) arbitration agreement shall be examined summarily as a preliminary question. The decision has no binding effect with respect to the arbitral tribunal's jurisdiction.; see Austrian Supreme Court, 23 July 2020, 18 ONc 2/20v, p. 8, [available in the RIS](#).

⁶⁸ See Christian Hausmaninger in *Zivilprozessgesetze* § 587 ZPO paras. 131-139 (n3).

⁶⁹ See, by way of example, Austrian Supreme Court, 28 September 2022, 18 ONc 1/22z, pp. 5-6, [available in the RIS](#).

⁷⁰ Austrian Supreme Court, 22 September 2021, 18 ONc 5/21m, [available in the RIS](#).

the courts may issue *ex parte* measures (see Question 4.5.4. below).⁷¹ The competence of the courts to issue interim measures may not be excluded by a party agreement.

4.5. Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

As a general rule, the parties are free to determine the procedure by establishing their own rules or by referring to arbitration rules unless their agreement is incompatible with the mandatory provisions of the ACCP.⁷² The agreement on institutional arbitration rules amounts to a complete exclusion of the non-mandatory procedural rules of the ACCP.⁷³ In the absence of a party agreement, the arbitral procedure is governed by the provisions of the ACCP.⁷⁴ If a procedural question is neither determined by a party agreement nor by the provisions of the ACCP, the procedure may be determined by the arbitrators pursuant to their procedural discretion.⁷⁵ In all cases, the parties must be treated fairly and the right to be heard of every party must be observed (section 594(2) ACCP).

4.5.1. Does it provide for the confidentiality of arbitration proceedings?

The ACCP does not contain a hard-and-fast rule that arbitration is confidential where this is not explicitly provided in the arbitration agreement or the agreed rules of procedure. It is uncontested that arbitration hearings are private. The confidentiality of arbitral proceedings may result from a separate party agreement on confidentiality that may, for example, be contained in the arbitration agreement, the main contract or the applicable arbitration rules.⁷⁶ In the absence of a confidentiality agreement, legal scholars have supported the view that arbitral proceedings as a contractual and private means of dispute resolution are by their nature confidential.⁷⁷ However, the Austrian Supreme Court has not yet decided this issue. The arbitrators' deliberations and their content are under all circumstances to be kept confidential even from the parties.⁷⁸

4.5.2. Does it regulate the length of arbitration proceedings?

The ACCP does not regulate the length of arbitration proceedings. However, section 594(2) ACCP provides that the parties must be treated fairly and that their right to be heard must be observed. Some authors have opined that the right to fair treatment includes the right to an expeditious and efficient procedure.⁷⁹

4.5.3. Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

Pursuant to section 595(2) ACCP, unless otherwise agreed by the parties, the arbitral tribunal may determine the venue of hearings and other acts of procedure at any place it considers appropriate. Hearings or meetings may be held at a different location than the seat even without prior authorization from the parties.⁸⁰

⁷¹ See ErläutRV 1158 BlgNR 22. GP p. 16 (n10); Christian Hausmaninger in *Zivilprozessgesetze* § 593 ZPO para. 62 (n3); Christian Hausmaninger in *Zivilprozessgesetze* § 585 ZPO para. 15 (n3).

⁷² Section 594(1) ACCP; see ErläutRV 1158 BlgNR 22. GP p. 17 (n10).

⁷³ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO paras. 79-80 (n3).

⁷⁴ ErläutRV 1158 BlgNR 22. GP p. 17 (n10); Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 90 (n3).

⁷⁵ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 3 (n3); see also Franz T. Schwarz in *Schiedsverfahrensrecht II* paras. 8/3 and 8/20 (n53).

⁷⁶ Franz T. Schwarz in *Schiedsverfahrensrecht II* paras. 8/286-8/301 (n53).

⁷⁷ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 134 (n3).

⁷⁸ Christian Hausmaninger in *Zivilprozessgesetze* § 604 ZPO para. 41 (n3); Christian Hausmaninger in *Zivilprozessgesetze* § 606 ZPO para. 52 (n3); For a detailed account of confidentiality in arbitration from a comparative as well as Austrian perspective see Alice Fremuth-Wolf in *Arbitration Law of Austria* Chapter 3.1 (n43).

⁷⁹ Cf. Martin Platte in *Arbitration Law of Austria* Section 599 para. 3 (n43); Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 107 (n3).

⁸⁰ See explanatory remarks to the government proposal, ErläutRV 1158 BlgNR 22. GP p. 5, (n10); Christian Hausmaninger in *Zivilprozessgesetze* § 595 ZPO paras. 32, 61-65 (n3).

Austrian courts may enforce interim measures issued by arbitral tribunals that are unknown to Austrian state court proceedings.⁸⁶ When enforcing interim measures unavailable in Austrian state court proceedings, the court may issue an order that comes closest to the measure ordered by the arbitral tribunal (section 593(3) ACCP). The court may reword the measure ordered by the arbitral tribunal to safeguard that the purpose of the arbitral tribunal's order is maintained.

4.5.5. Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

Similar to many other arbitration laws, the ACCP does not contain detailed rules on the taking of evidence. Section 599(1) ACCP stipulates that the arbitrators are free as regards the admissibility of evidence as well as in taking and evaluating the evidence brought before it. Arbitrators may admit, but also reject evidence a party wishes to introduce into the proceedings.⁸⁷ The arbitrators' freedom regarding the admissibility of evidence is restricted by the mandatory requirements to treat the parties fairly and to observe equal treatment and the right to be heard.⁸⁸ According to the Austrian Supreme Court, a refusal to take evidence requested by a party does not *per se* constitute a ground for setting aside the arbitral award.⁸⁹ Only if an essential party submission has been *arbitrarily* ignored, the award may be challenged.⁹⁰

There are no restrictions as regards the presentation of testimony by a party employee, nor are there any other rules restricting the admissibility or the weight of certain types of evidence. In line with international practice, the Austrian arbitration law does not distinguish between the testimony of a witness and a party representative.⁹¹

4.5.6. Does it make it mandatory to hold a hearing?

Section 598 ACCP provides that, in the absence of a party agreement, it is for the arbitral tribunal to decide whether an oral hearing should be held or a document-only procedure is sufficient. However, at the request of one party, a hearing must be held at an appropriate stage of the proceedings if the parties have not agreed on a written procedure. According to the jurisprudence of the Austrian Supreme Court, non-compliance with a party's request to hold an oral hearing "*regularly*" constitutes a reason to set aside an arbitral award based on section 611(2) number 2 ACCP, *i.e.*, the inability of a party to present its case.⁹² However, since section 598 ACCP provides that an oral hearing must be held "*at an appropriate stage of the proceedings*", an arbitral tribunal may disregard the request to hold a hearing if it is made belatedly or as a mere delaying tactic. The arbitral tribunal may also decide against holding a hearing when an oral hearing would be pure formalism.⁹³

4.5.7. Does it prescribe principles governing the awarding of interest?

The issue of interest is primarily regulated in the Austrian Civil Code ("*Allgemeines Bürgerliches Gesetzbuch*", "**ACC**")⁹⁴ and is thus treated as a matter of substantive law. Therefore, there are no arbitration-specific principles for awarding interest. Compound interest may be claimed pursuant to section 1000(2) ACC if

⁸⁶ Christian Hausmaninger in *Zivilprozessgesetze* § 593 ZPO para. 53 (n3).

⁸⁷ Christian Hausmaninger in *Zivilprozessgesetze* § 599 ZPO paras. 1, 43 (n3).

⁸⁸ Franz T. Schwarz in *Schiedsverfahrensrecht II* para. 8/331 (n53).

⁸⁹ Austrian Supreme Court, 15 January 2020, 18 OCg 9/19a, p. 8, [available in the RIS](#), with further references.

⁹⁰ Austrian Supreme Court, 17 October 2024, 18 OCg 1/24g, p. 14, [available in the RIS](#).

⁹¹ Franz T. Schwarz in *Schiedsverfahrensrecht II* para. 8/331 (n53).

⁹² Legal Rule RS0126091, [available in the RIS](#); Austrian Supreme Court, 30 June 2010, 7 Ob 111/10i, p. 11, [available in the RIS](#).

⁹³ Christian Hausmaninger in *Zivilprozessgesetze* § 598 ZPO para. 40 (n3); Austrian Supreme Court, 15 January 2020, 18 OCg 9/19a, p. 10 (n89).

⁹⁴ Allgemeines Bürgerliches Gesetzbuch [ABGB] [Civil Code] Justizgesetzsammlung [JGS] No. 946/1811, as amended, [available in the RIS](#).

agreed by the parties or, in any event, from the pendency of legal proceedings. The default compound interest rate is 4% p.a.⁹⁵

Pursuant to section 54a ACCP, it is possible for a party to claim interest on awarded costs.⁹⁶ Section 54a ACCP stipulates that enforcement courts may not only order the enforcement of the awarded costs, but also interest thereon regardless of whether this is provided in the decision on costs.⁹⁷ Arbitral tribunals seated in Austria frequently award interest on costs in accordance with this provision.

4.5.8. Does it prescribe principles governing the allocation of arbitration costs?

Section 609 ACCP sets out the principles governing the arbitral tribunal's cost decision, which apply in the absence of a party agreement.⁹⁸ Arbitrators are under a duty to decide on the allocation of the arbitration costs, including reasonable costs of party representation. The costs decision has to be rendered in the form of an arbitral award, either together with the decision on the merits or in a separate award on costs.⁹⁹ The arbitral tribunal's costs decision should be based on the arbitral tribunal's discretion, taking into account the circumstances of the case. Section 609(1) ACCP specifically mentions the outcome of the proceedings as one of the factors to be taken into account for the allocation of costs. Any reasonably incurred costs for pursuit or defence of a claim may be considered for the determination of recoverable costs of the parties (section 609(1) ACCP). Arbitral tribunals are not bound by any fee schedules applicable in court proceedings. Section 609(2) ACCP clarifies that an arbitral tribunal declining jurisdiction is competent to decide on arbitration costs in the award.

4.6. Liability

4.6.1. Do arbitrators benefit from immunity from civil liability?

Arbitrators do not benefit from immunity from civil liability. However, the arbitrators' liability is privileged compared to the general liability regime in Austria. Cases dealing with the liability of arbitrators are rare.

Section 594(4) ACCP stipulates that *"[a]n arbitrator who does not fulfil his obligations resulting from the acceptance of his appointment at all or in a timely manner shall be liable to the parties for all damages caused by his wrongful refusal or delay."* The arbitrator's obligations which, in the case of their breach, may entail his or her civil liability may be contained in the ACCP, the arbitration agreement or in the arbitrator contract (often impliedly) concluded between the arbitrator and the parties.¹⁰⁰ While the text of section 594(4) ACCP seems to restrict the arbitrator's liability to a refusal or a delay in performing the arbitrator's obligations, the Austrian Supreme Court has ruled that an arbitrator may, in certain circumstances, also be liable for erroneous procedural decisions and arbitral awards.¹⁰¹ According to the Austrian Supreme Court, the arbitrators' liability is at the outset restricted to cases where the arbitral award is set aside.¹⁰²

⁹⁵ Daphne Aichberger-Beig in *ABGB-ON* (Andreas Kletečka & Martin Schauer eds., 2023) § 1000 paras. 4-5.

⁹⁶ Even though not contained in the fourth chapter of the ACCP, which applies to arbitration, section 54a ACCP has been held to apply to cost decisions rendered by (Austrian) arbitral tribunals. ; see Legal Rule RS0111340, [available in the RIS](#).

⁹⁷ Cf. Michael Bydlinski in *Zivilprozessgesetze* § 54a ZPO para. 4 (n3).

⁹⁸ See Austrian Supreme Court, 17 October 2024, 18 OCg 1/24g, p. 18 (n90), the parties agreed on the application of Art 38 of the ICC Rules.

⁹⁹ Section 609(3) – (5) ACCP.

¹⁰⁰ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 117 (n3).

¹⁰¹ See Austrian Supreme Court, 17 October 1928, 3 Ob 573/28, ZBl 1929, 79 (not publicly available); Austrian Supreme Court, 6 June 2005, 9 Ob 126/04a, [available in the RIS](#); These judgments related to the ACCP before the Austrian Arbitration Law Reform Act 2006 entered into force, but are equally valid for the ACCP in its revised version, see ErläutRV 1158 BlgNR 22. GP p. 18 (n10).

¹⁰² Austrian Supreme Court, 17 October 1928, 3 Ob 573/28, ZBl 1929, 79 (n101); Austrian Supreme Court, 6 June 2005, 9 Ob 126/04a, pp. 6-7 (n101); Austrian Supreme Court, 28 February 2008, 8 Ob 4/08h, pp. 4-5, [available in the RIS](#); Austrian Supreme Court, 17 February 2014, 4 Ob 197/13v, pp. 10-11, [available in the RIS](#); Austrian Supreme Court, 22 March 2016, 5 Ob 30/16x, p. 4, [available in the RIS](#); Legal Rule RS0119996, [available in the RIS](#); Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 118 (n3); *Bollenberger in Schiedsverfahrensrecht II* para. 14/58 (n53).

The arbitrators' liability has to be assessed in accordance with the general principles of Austrian tort law.¹⁰³ This means that an arbitrator can only be held liable for a culpable breach of his or her obligations. In the absence of any stipulation of the degree of negligence applicable to the arbitrators' liability, "slight" negligence is arguably sufficient to entail civil liability.¹⁰⁴ It has, however, been argued in the academic literature that the arbitrators' liability should be limited to cases of gross negligence, similar to the Austrian liability regime for judges.¹⁰⁵

The arbitrators' liability may be restricted by way of a contractual waiver of liability (e.g., for "slight" negligence or for damages exceeding a certain amount)¹⁰⁶ to the extent permissible under Austrian law. Such waivers are regularly found in institutional arbitration rules.¹⁰⁷ Waivers of liability are not permissible without restrictions but may be qualified immoral ("*sittenwidrig*") and therefore invalid depending on the extent of the exclusion of liability.¹⁰⁸ The Austrian Supreme Court held that liability waivers for "slight" negligence are generally permissible but not for cases of severe gross negligence or intentional conduct.¹⁰⁹

4.6.2. Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

There is no immunity from criminal liability for any of the participants in an arbitration proceeding. Arbitrators may be criminally liable for corruption-related offences – including, but not limited to bribery.¹¹⁰ Contrary to court proceedings, the false testimony of a witness in arbitration proceedings is not *per se* punishable under the Austrian Criminal Code ("*Strafgesetzbuch*").¹¹¹ However, false testimony is criminally punishable if it is qualified as (attempted) fraud. An arbitral award may be set aside if it is tainted by criminal conduct pursuant to section 611(6) ACCP.

5. The award

5.1. Can parties waive the requirement for an award to provide reasons?

Section 606(2) ACCP allows the parties to waive the requirement to provide reasons in the award.¹¹² When agreeing on a waiver of the duty to provide reasons, it is advisable to consider that an unreasoned award may be difficult to set aside. For example, it may be impossible to determine an *ordre public* violation based on an unreasoned award.¹¹³ In any event, an arbitral award must always identify the parties and the arbitrators and must contain a short description of the matter in dispute.¹¹⁴

¹⁰³ Austrian Supreme Court, 6 June 2006, 9 Ob 126/04a (n101); Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 118 (n3); *Bollenberger* in *Schiedsverfahrensrecht II* para. 14/58 (n53).

¹⁰⁴ See *Bollenberger* in *Schiedsverfahrensrecht II* para. 14/63 (n53).

¹⁰⁵ Heinz Krejci, *Zur Schiedsrichterhaftung*, ÖJZ 2007 87, pp. 90-97; Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO paras. 120-121 (n3); *Bollenberger* in *Schiedsverfahrensrecht II* para. 14/63 (all with further references) (n53).

¹⁰⁶ *Bollenberger* in *Schiedsverfahrensrecht II* para. 14/65 (n53); Austrian Supreme Court, 17 February 2014, 4 Ob 197/13v (n102).

¹⁰⁷ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO paras. 127-128 (n3); Article 41 ICC Rules 2021; Article 46 Vienna Rules 2021; Article 45 DIS Rules 2018; Article 31 LCIA Rules 2020; Article 16 UNCITRAL Arbitration Rules 2021.

¹⁰⁸ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 128 (n3); *Bollenberger* in *Schiedsverfahrensrecht II* para. 14/65 (n53).

¹⁰⁹ Austrian Supreme Court, 22 March 2016, 5 Ob 30/16x, p. 4 (n102); see also, Heinz Krejci, *Zur Schiedsrichterhaftung*, p. 96 (n105).

¹¹⁰ See sections 304-309, 64(2), (2a) lit b, 74(1) number 4c Austrian Criminal Code.

¹¹¹ *Strafgesetzbuch* [StGB] [Criminal Code], Bundesgesetzblatt [BGBl] No. 60/1974, as amended, [available in the RIS](#); see Franz Plöchl & Wilfried Seidl in *Wiener Kommentar zum StGB* (Frank Höpfel & Eckart Ratz eds., 2017) § 288 para. 4.

¹¹² Christian Hausmaninger in *Zivilprozessgesetze* § 606 ZPO para. 80 (n3) with further references.

¹¹³ Hubertus Schumacher in *Schiedsverfahrensrecht II* para. 10/277 (n53).

¹¹⁴ Hubertus Schumacher in *Schiedsverfahrensrecht II* para. 10/280 (n53).

5.2. Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

The ACCP is silent on whether the parties may waive their right to seek annulment of an arbitral award. Since section 611 ACCP, which sets out the grounds for annulment, is considered to be mandatory, a general advance waiver of the right to seek the annulment of an award is deemed invalid.¹¹⁵ However, the prevailing legal doctrine considers that the parties may waive the right to invoke specific annulment grounds after the award has been rendered and if the annulment ground is known to the waiving party.¹¹⁶ Annulment grounds which must be considered *ex officio* cannot be waived. Accordingly, the lack of arbitrability (section 611(2) number 7) and the violation of the substantive *ordre public* (section 611(2) number 8) cannot be waived.¹¹⁷

5.3. What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical requirements regarding the validity of arbitral awards. Pursuant to section 606(1) ACCP, an arbitral award must be rendered in writing and must be signed by all arbitrators to be valid under Austrian law. Unless otherwise agreed, the signatures by the majority of the arbitrators are sufficient provided that one of the signing arbitrators records on the award the reason for the omitted signature (section 606(1) ACCP).

5.4. Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

Section 611(1) ACCP provides that annulment proceedings are the only remedy against an arbitral award. An appeal against an award is thus not possible under the ACCP. The Austrian Supreme Court repeatedly held that annulment proceedings shall not serve as a means for revising the correctness of the factual and legal findings of the arbitral tribunal (prohibition of a *révision au fond*).¹¹⁸

Further the Austrian Supreme Court reiterated that the competences of state courts in relation to arbitral proceedings are comprehensively regulated in the arbitration law (sections 577-618 ACCP). In its reasoning, the Austrian Supreme Court explicitly takes into account the international context of arbitration by stating that arbitral proceedings can be conducted in Austria without the application of restrictions not provided for by the arbitration law.¹¹⁹

5.5. What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Austrian arbitration law differentiates between the enforcement of domestic and foreign awards. Pursuant to section 607 ACCP, domestic awards are deemed to have the same effect as final and binding court judgments, thus constituting a readily enforceable enforcement title. In order to be enforceable, a domestic award must be confirmed as final, binding and enforceable pursuant to section 606 ACCP. The confirmation of enforceability is a special feature of Austrian law that the presiding arbitrator of an arbitral tribunal or the sole arbitrator are contractually obliged to issue upon request of a party if the arbitration agreement or the

¹¹⁵ Christian Hausmaninger in *Zivilprozessgesetze* § 611 ZPO para. 195 (n3) with further references; Dietmar Czernich, *Der Vorwegverzicht auf die Anfechtung des Schiedsspruchs – zugleich ein Beitrag zur Stellung des Schiedsverfahrens im österreichischen Recht* JBl 2016 69.

¹¹⁶ Christian Hausmaninger in *Zivilprozessgesetze* § 611 ZPO para. 196 (n3) with further references.

¹¹⁷ Christian Hausmaninger in *Zivilprozessgesetze* § 611 ZPO para. 196 (n3); Austrian Supreme Court, 24 August 2011, 3 Ob 65/11x, p. 22, [available in the RIS](#).

¹¹⁸ Legal Rule RS0045124, [available in the RIS](#); Legal Rule RS0002409, [available in the RIS](#); see, for example, Austrian Supreme Court, 1 April 2008, 5 Ob 272/07x, p. 13, [available in the RIS](#).

¹¹⁹ Austrian Supreme Court, 25 June 2024, 4 Ob 46/24d, p. 3, [available in the RIS](#).

arbitral proceedings are governed by Austrian law. However, it is not a prerequisite for the validity of the award.¹²⁰ There is no need to “confirm” the award by a state court, a bailiff or the like.

Foreign awards must be formally recognized and declared enforceable by the competent Austrian court pursuant to section 614 ACCP (“Exequatur”), which refers to the provisions of the Austrian Enforcement Act (“Exekutionsordnung”, “**Enforcement Act**”).¹²¹ International law takes precedence over Austrian statutory law according to the explicit wording of section 614(1) ACCP and section 416 of the Enforcement Act. Regarding foreign awards, the requirements for their recognition are therefore generally those set out in the New York Convention or other international treaties such as the European Convention to which Austria is a party. Pursuant to section 614 ACCP and Article IV New York Convention, an application for obtaining a declaration of recognition and enforceability must accord to the formal requirements of the New York Convention and must be accompanied by the “*duly authenticated original award*” or a “*duly certified copy*” thereof. According to the Austrian Supreme Court, this requirement is fulfilled if the authenticity has been confirmed by an Austrian authority, by an authority of the country whose law governs the arbitration or by a representative of the administering arbitral institution if provided for in the institutional rules.¹²² In addition, if the award is not rendered in German, it must be translated. Such translation must be certified by a court-sworn translator or by a diplomatic or consular agent.¹²³ A partial translation of an award is not sufficient. Finally, in deviation from Article IV(1) lit b New York Convention, the original or a certified copy of the arbitration agreement has to be submitted only if requested by the court. The grounds for refusing recognition and enforcement are stipulated in Article V of the New York Convention.

Austrian law does not foresee any time limitations for the recognition and enforcement of arbitral awards. However, it provides for a statute of limitation of thirty years to enforce a final court decision (section 1479 ACC). In this regard, according to the Austrian Supreme Court, the statute of limitation for judgments and arbitral awards is governed by the law applicable to the obligation that was decided upon.¹²⁴ Thus, Austrian courts may apply statutes of limitation contained in foreign laws in proceedings for the enforcement of foreign awards.¹²⁵

5.6. Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

There is no automatic suspension of the enforcement of an arbitral award if annulment proceedings are initiated. In case annulment proceedings are initiated in the seat country, the Austrian court where enforcement proceedings are pending may suspend the proceedings or oblige the award creditor to deposit a security.¹²⁶ When assessing whether to suspend the proceedings or order security, the court shall consider the chances of success of the annulment proceedings in the seat country. The burden of proof regarding the chances of success in the annulment proceedings must be demonstrated by the award debtor.¹²⁷

¹²⁰ Legal Rule RS0045242, [available in the RIS](#); Legal Rule RS0045225, [available in the RIS](#).

¹²¹ Exekutionsordnung [EO] [Enforcement Act], Reichsgesetzblatt [RGBL] No. 79/1896, [available in the RIS](#).

¹²² See Austrian Supreme Court, 11 June 1969, 3 Ob 62/69, [available in the RIS](#), Legal Rule RS0109158, [available in the RIS](#); and OGH 3 Ob 65/11x (n117), respectively; see, for example, Article 36(4) VIAC Rules 2021.

¹²³ Austrian Supreme Court, 26 April 2006, 3 Ob 211/05h, [available in the RIS](#).

¹²⁴ Austrian Supreme Court, 21 March 2001, 3 Ob 172/00s, p. 7, [available in the RIS](#).

¹²⁵ Austrian Supreme Court, 10 February 1965, 6 Ob 32/65, [available in the RIS](#), where the Austrian Supreme court applied the German 30-year statute of limitation on a German payment order; see also, Austrian Supreme Court, 23 October 1991, 3 Ob 88/91, [available in the RIS](#).

¹²⁶ Article VI New York Convention (applies during the stage of recognition), section 411(5) Enforcement Act (applies during enforcement); see Austrian Supreme Court, 14 March 2012, 3 Ob 248/11h, pp. 5-6, [available in the RIS](#).

¹²⁷ Legal Rule RS0127122, [available in the RIS](#).

5.7. When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

The annulment of an arbitral award at its seat may have different effects depending on the applicable international treaty governing its recognition and enforcement. Within the scope of application of the New York Convention, the prevailing view of legal scholars is that the New York Convention does not leave room for the courts' discretion to recognise and enforce an award annulled at the seat of arbitration.¹²⁸ No foreign award annulled at the seat was enforced in Austria under the regime of the New York Convention.

Pursuant to Article IX of the European Convention, the setting aside of an arbitral award in one contracting state shall only constitute a ground for the refusal of recognition or enforcement in another contracting state if it is based on one of the listed reasons. In particular, the annulment of an award at the seat because of a violation of the public policy of the seat is not a ground for refusing recognition and enforcement in another member state. The Austrian courts have recognized and enforced an award annulled at the seat for a violation of public policy in accordance with Article IX of the European Convention.¹²⁹

5.8. Are foreign awards readily enforceable in practice?

The enforcement of a foreign arbitral awards in Austria is fast and efficient. Enforcement proceedings are conducted *ex parte*. In practice, in line with section 412(1) Enforcement Act, the award creditor submits an application for the actual enforcement together with the application for a declaration of recognition and enforcement of the arbitral award. The actual enforcement procedure is equivalent to the procedure applicable for the enforcement of domestic judgments. The enforcement application must be made to the competent district court ("Bezirksgericht"). The declaration of recognition and enforcement may usually be obtained within several weeks. Pursuant to section 411 Enforcement Act, a decision on the enforcement of an arbitral award may be appealed by the award debtor within four weeks or, if the debtor has its seat abroad, within eight weeks after the decision has been served ("Rekurs"). Under certain circumstances, an appeal to the Austrian Supreme Court is possible ("Revisionsrekurs").

6. Funding arrangements

6.1. Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

While the general premise is that an attorney is free to agree on his or her remuneration, there are a few limitations under the ACC and the Code of Professional Conduct for Lawyers ("Rechtsanwaltsordnung"). Pure contingency fees and *pactum de quota litis* arrangements are prohibited and unenforceable.¹³⁰ In addition, agreeing on an unreasonably high remuneration is not allowed. The assessment is conducted on a case-by-case basis. In case the remuneration is unreasonably high, Austrian attorneys may be liable under their disciplinary rules.¹³¹ Despite the prohibition of *pacta de quota litis*, lawyers are allowed to agree on alternative fee arrangements stipulating success fees.¹³²

¹²⁸ Thomas Garber & Christian Koller in *Kommentar zur Exekutionsordnung* Vor § 79 EO paras. 599, 649 (n23); Austrian Supreme Court, 29 September 2004, 3 Ob 22/04p, p. 5, [available in the RIS](#).

¹²⁹ Austrian Supreme Court, 20 October 1993, 3 Ob 117/93, [available in the RIS](#); Austrian Supreme Court, 23 February 1998, 3 Ob 115/95, [available in the RIS](#); Florian Haugeneder, "European Convention on International Commercial Arbitration", MPIL, para. 72.

¹³⁰ Section 879 ACC; Rechtsanwaltsordnung [RAO] [Code of Professional Conduct for Lawyers], Reichsgesetzblatt [RGBl] No. 96/1868, as amended, section 16, [available in the RIS](#).

¹³¹ Disziplinarstatut für Rechtsanwälte und Rechtsanwaltsanwärter [DSt] [Disciplinary Statue for Lawyers and Lawyers in Training], Bundesgesetzblatt [BGBl] No. 474/1990, as amended, section 1, [available in the RIS](#).

¹³² For further information, see Marcel Pilshofer, *Das rein erfolgsabhängige Honorar - zulässige Form anwaltlicher Entlohnung?*, AnwBl 2011177.

7. Arbitration related third-party funding is not covered by a specific legal or regulatory framework. Nevertheless, third-party funding is generally considered permissible under Austrian law and is widely practiced, as confirmed by the Austrian Supreme Court¹³³ While there is a discussion as to whether the prohibition of *pacta de quota litis* extends to third-party funders, the prevailing opinion is that this is not generally the case.¹³⁴ The Austrian Supreme Court determined that the prohibition of *pactum de quota litis* does not apply to third-party funders, unless they give legal advice to the funded party.¹³⁵ **Arbitration and technology**

7.1. Is the validity of blockchain-based evidence recognised?

Austrian law does not explicitly address blockchain-based evidence and accordingly does not explicitly recognize its validity. In the context of arbitral proceedings, no restrictions are imposed by statutory law as to the type of evidence that may be adduced. Section 599 ACCP clarifies that arbitral tribunals are not bound by the evidence rules applicable in civil court proceedings.¹³⁶ Blockchain-based evidence is, therefore, generally admissible subject to the discretion of the arbitral tribunal in evidentiary matters.

The assessment of the evidentiary value of blockchain technology lies with the arbitral tribunal. Thus, while there is no reason to deny records legal effect merely because they were created, stored or verified by means of blockchain technology, there is also no legal presumption that blockchain-technology guarantees immutability of data or confirms its source.

7.2. Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

Neither statutory law nor case law has specifically addressed the question as to whether an arbitration agreement recorded on a blockchain is valid under Austrian law. Pursuant to section 583(1) ACCP, an arbitration agreement is valid if it is contained in an exchange of communications by any means of transmitting messages that provides a record of the agreement. Section 583 (1) ACCP reflects the intention of the Austrian legislator to loosen the strict "in writing" requirement and allow for modern means of recording the parties' agreement to arbitrate.¹³⁷ Provided that the parties have actually communicated the agreement to arbitrate to one another, a record of the arbitration agreement on a blockchain should therefore be valid.¹³⁸

By contrast, section 606 ACCP requires an arbitral award to be made in writing and signed by the arbitrator or arbitrators. This is a strict "in writing" requirement which will not be met by merely recording the arbitral award on a blockchain. However, if the arbitral award is signed by means of a qualified electronic signature issued by a trusted service provider, this fulfils the strict "in writing" requirement under Austrian law (see Question 7.1).

7.3. Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

The recognition and enforcement of arbitral agreements in the context of enforcement proceedings in Austria is generally governed by the New York Convention. In line with the New York Convention's *in favorem validitatis* approach of Article VII(1) New York Convention, an arbitration agreement is considered valid if it either meets the form requirements of Article II New York Convention or the form requirements pursuant to section 614 ACCP. Section 614(1) ACCP provides that the arbitration agreement must cumulatively comply with the form requirements of section 583(1) ACCP and "*the law applicable to the arbitration agreement*".

¹³³ Austrian Supreme Court, 15 December 2021, 18 OCg 5/21s, p. 16, [available in the RIS](#).

¹³⁴ Cf. Graf in Kletečka/Schauer *ABGB-ON* (Andreas Kletečka & Martin Schauer eds., 2024) § 879 para. 310.

¹³⁵ Austrian Supreme Court, 23 February 2021, 4 Ob 180/20d; Austrian Supreme Court, 25 March 2021, 2 Ob 10/21s.

¹³⁶ Christian Hausmaninger in *Zivilprozessgesetze* § 599 ZPO para. 40 (n3).

¹³⁷ See ErläutRV 1158 BlgNR 22. GP p. 9 (n10).

¹³⁸ See Hanzl, *Handbuch Blockchain und Smart Contracts* Chapter 5.18.4.4.2 (2020) with further references.

Therefore, provided that a blockchain arbitration agreement complies with section 583(1) ACCP (see Question 7.3) and the law applicable to the arbitration agreement, it will be recognized by the Austrian courts.

Moreover, section 614 ACCP excludes the application of Article IV(1) lit b New York Convention to the extent that the original of the arbitration agreement or a certified copy thereof shall only be required upon request by the court, *i.e.*, in case of doubt as to the existence of an arbitration agreement. Should an original be required, evidence that the arbitration agreement recorded on blockchain qualifies as an original (or a duly certified copy thereof) would have to be furnished, for example, by means of an expert opinion (see Question 7.1.).

Article IV(1) lit a New York Convention requires the party seeking recognition and enforcement to supply either *“the duly authenticated original award or a duly certified copy thereof”*. Neither the text of Article IV New York Convention nor the *travaux préparatoires* of the provision provide a definition of the terms “authenticated” or “certified”. In line with section 606 ACCP, the Austrian Supreme Court has held that authentication means a confirmation that the signatures of the arbitrators are authentic.¹³⁹ Under Austrian law, only a qualified electronic signature issued by a trusted service provider fulfils this prerequisite. Accordingly, the use of blockchain to record the arbitral award does not in itself suffice to qualify the award as an original for the purposes of recognition and enforcement.

7.4. Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

For the purposes of recognition and enforcement, the applicant party needs to provide the courts with a *“duly authenticated original award or a duly certified copy thereof”*. According to the Austrian Supreme Court, this means that either the authenticity of the arbitrators’ signatures needs to be confirmed or, where a certified copy of the original award is provided, this copy must show the confirmation of the authenticity of the arbitrators’ signatures.¹⁴⁰ The electronic copy of a signature cannot be authenticated. Therefore, even though there are no court decisions dealing specifically with this issue, courts would most likely not consider awards where only the image of a signature is inserted as originals for the purposes of recognition and enforcement.

As regards digitally signed awards, the digital signature can only be authenticated if it fulfils the requirements of a qualified electronic signature issued by a trusted service provider under the Austrian Signature and Trusted Services Act, which implements EU Regulation 910/2014 of 23 July 2014 (see already Question 7.3).

8. Is there likely to be any significant reform of the arbitration law in the near future?

Currently, no significant reform is foreseeable.

9. Compatibility of the Delos Rules with local arbitration law

No incompatibilities.

10. Further reading

- Thomas Garber, Christian Koller §§ 79 EO et seq. in Peter Angst and Paul Oberhammer (eds) *Kommentar zur Exekutionsordnung* (2015)
- Christian Hausmaninger, §§ 577 ff in Hans W. Fasching and Andreas Konecny (eds), *Kommentar zu den Zivilprozessgesetzen*, Manz (2nd ed., 2016)

¹³⁹ Austrian Supreme Court, 3 September 2008, 3 Ob 35/08f, p. 13, [available in the RIS](#).

¹⁴⁰ Legal Rule RS0124091, [available in the RIS](#); Austrian Supreme Court, 3 September 2008, 3 Ob 35/08f, p. 13 (n139) (with further references).

- Christoph Liebscher, Paul Oberhammer and Walter H. Rechberger (eds), *Schiedsverfahrensrecht I*, Verlag Österreich (2011)
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- Michael Nueber (ed), *Handbuch Schiedsgerichtsbarkeit und ADR*, Lexis Nexis ARD ORAC (2021)
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- Katharina Plavec, §§ 577 ff in Georg Kodek and Paul Oberhammer (eds), *ZPO-ON*, Manz (2023)
- Stefan Riegler, Alexander Petsche, Alice Fremuth-Wolf, Martin Platte and Christoph Liebscher (eds), *Arbitration Law of Austria: Practice and Procedure*, Juris Publishing (2008)
- Franz T. Schwarz and Christian W. Konrad, *The Vienna Rules - a commentary on international arbitration in Austria*, Alphen aan den Rijn [u.a.], Kluwer Law Int. (2009)
- Hellwig Torggler (ed), *Praxishandbuch Schiedsgerichtsbarkeit*, Verlag Nomos (2nd ed., 2017)
- Gerold Zeiler (ed), *Austrian Arbitration Law*, NWV Verlag (2016)
- Gerold Zeiler (ed), *Schiedsverfahren*, NWV Verlag (2nd ed., 2014)

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	<p>The leading Austrian arbitral institution is the Vienna International Arbitral Centre ("VIAC").</p> <p>Website: https://www.viac.eu/en</p> <p>Email address: office@viac.eu</p>
Main arbitration hearing facilities for in-person hearings?	<p>VIAC offers the premises of the Austrian Federal Economic Chamber for arbitration hearings.</p> <p>14 rooms are available in total as hearing / breakout rooms (Capacity: 3x80, 2x50, 1x40, 5x30, 1x28, 2x15 persons).</p> <p>For further information please see: https://viac.eu/en/service/hearing-facilities.</p>
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	<p>Reprographics facilities are not included in the services/equipment offered by VIAC. However, there are various reprographics providers who offer their services in close proximity.</p>
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	ϕ
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	ϕ
Other leading arbitral bodies with offices in the jurisdiction?	<p>The ICC National Committee for Austria.</p> <p>Website: https://www.icc-austria.org/en/</p> <p>Email address: icc@icc-austria.org</p> <p>Permanent Court of Arbitration Vienna Office</p> <p>Website: https://pca-cpa.org/en/about/international-offices/vienna-office/</p> <p>Email address: vienna@pca-cpa.org</p>