

GUIDE TO ARBITRATION PLACES (GAP)

AUSTRIA

CHAPTER PREPARED BY

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| 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 as a general rule. There are shorter limitation periods for certain claims, e.g., for warranty claims (2 years for moveable objects and 3 years for immoveable objects), damage claims (3 years after becoming aware of the damage and the liable party, within a maximum limitation period of 30 years) and accounts receivable (3 years). The statute of limitations 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 2020, if available?	For 2020, Austria has a score of 0.77 and ranks 12 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 (<i>e.g.</i> , 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.

<p>Do annulment proceedings typically suspend enforcement proceedings?</p>	<p>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.</p>
<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>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.</p>
<p>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?</p>	<p>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.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>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.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>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.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>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.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>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.</p>
<p>Other key points to note?</p>	<p>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</p>

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.

JURISDICTION DETAILED ANALYSIS¹

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.² 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.³

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.⁴
- 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

¹ The authors are grateful to [Elisabeth Rath](#) for her valuable help in the preparation of this chapter.

² Zivilprozessordnung [ZPO] [Code of Civil Procedure] Reichsgesetzblatt [RGBl.] 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 (prevalingly 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.

³ 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.

⁴ Christian Hausmaninger in *Kommentar zu den Zivilprozessgesetzen* (Hans W. Fasching & Andreas Konecny eds., 2016) § 586 ZPO para. 34.

to consider, when appointing a sole or presiding arbitrator, whether it is advisable to appoint an arbitrator of a nationality different from those of the parties.⁵ 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).⁶
- 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) no. 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, 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.⁷ In addition, sections 617, 618 ACCP set out special jurisdictional rules for employment and consumer disputes. 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 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

⁵ Christian Hausmaninger in *Zivilprozessgesetze* § 587 ZPO para. 178 (n4).

⁶ Christian Hausmaninger in *Zivilprozessgesetze* § 584 ZPO para. 35 (n4).

⁷ 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](#).

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 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 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 (n4); 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 seq.*, [available in the RIS](#); Austrian Supreme Court, 15 May 2019, 18 OCg 6/18h, p. 16 (n11).

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 (n4).

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 validates"*) approach when 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 (n4); Christian Koller in *Schiedsverfahrensrecht I* (Christoph Liebscher et al. eds., 2011) paras. 3/183-184.

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, 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 JBl 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 (n4).

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](#).

²³ Thomas Garber & Christian Koller in *Kommentar zur Exekutionsordnung* (Peter Angst, Paul Oberhammers 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* para. 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 Under certain circumstances, arbitration agreements may also bind insolvency administrators.³⁰ 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.³¹ 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.³²

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.³³ 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.³⁴ 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.

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.³⁵ This also applies to juridical persons constituted under public law.³⁶ Consumers

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

²⁷ Section 1008 ACC; Christian Hausmaninger in *Zivilprozessgesetze* § 583 ZPO paras. 85-90 (n4).

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

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

³⁰ Christian Koller in *Schiedsverfahrensrecht I* para. 3/307-3/310 (n18).

³¹ Christian Koller in *Schiedsverfahrensrecht I* para. 3/311 (n18).

³² Christian Koller in *Schiedsverfahrensrecht I* para. 3/311-3/318 (n18).

³³ ErläutRV 1158 BlgNR 22. GP, p. 8 (n10).

³⁴ Christian Hausmaninger in *Zivilprozessgesetze* § 582 ZPO paras. 30-48 (n4).

³⁵ Christian Koller in *Schiedsverfahrensrecht I* para. 3/131 (n18).

³⁶ Christian Koller in *Schiedsverfahrensrecht I* para. 3/135 (n18).

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 consumers³⁷ The same restrictions apply to employment-related matters.³⁸

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.³⁹ 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.⁴⁰ Exceptionally, this rule does not apply when the jurisdiction of the arbitral tribunal has been 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).

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.⁴¹ 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.⁴²

³⁷ 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](#).

³⁸ ErläutRV 1158 BlgNR 22. GP, pp. 8-9 (n10).

³⁹ 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).

⁴⁰ Christian Hausmaninger in *Zivilprozessgesetz* § 584 ZPO para. 31 (n4).

⁴¹ Christian Hausmaninger in *Zivilprozessgesetz* § 593 ZPO para. 58/1 (n4).

⁴² ICC Case (unpublished).

There is no published Austrian court decision dealing with an injunction by arbitrators enjoining parties to refrain from initiating, halting or withdrawing litigation proceedings.⁴³

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,⁴⁴ (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 anti-suit injunctions or anti-arbitration injunctions.⁴⁵ 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,⁴⁶ 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.⁴⁷ Agreements that prohibit legal representation generally or by certain (groups of) people are not permissible. Arbitrators may not require parties to obtain legal representation.⁴⁸ This does, however, not apply to arbitration-related state-court proceedings where parties generally have to be represented by Austrian counsel. Established European

⁴³ 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>.

⁴⁴ See Alexander Petsche in *Arbitration Law of Austria* Section 602 para. 13 (n39); 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).

⁴⁵ 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 (n39).

⁴⁶ 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; Article 13 Vienna Rules; Article 26(4) ICC Rules; Article 13.6 HKIAC Rules 2018.

⁴⁷ Christian Zib in *Zivilprozessgesetze* § 27 ZPO para. 58 (n4); Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 109 (n4); ErläutRV 1158 BlgNR 22. GP p. 17 (n10).

⁴⁸ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 109 (n4); Franz T. Schwarz in *Schiedsverfahrensrecht II* (Christoph Liebscher et al. eds., 2016) para. 8/162.

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”).⁴⁹

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.⁵⁰ 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.⁵¹ 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**”).⁵² When assessing an arbitrator’s independence and impartiality, the Austrian Supreme Court applies a strict standard⁵³ 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 recent decisions. In one case, the arbitrator and one of the parties’ counsel were co-counsel in another unrelated arbitration.⁵⁴ 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,⁵⁵ 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.⁵⁶

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.⁵⁷ 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.⁵⁸ Doubts about the independence and impartiality of an arbitrator may be stronger the more severe

⁴⁹ Europäisches Rechtsanwaltsgesetz [EIRAG] [Code for European Lawyers] Bundesgesetzblatt [BGBl.] No. 27/2000, as amended, sections 5, 14, [available in the RIS](#).

⁵⁰ Austrian Supreme Court, 15 May 2019, 18 ONc 1/19w, p. 8, [available in the RIS](#).

⁵¹ 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 (n50).

⁵² Austrian Supreme Court, 15 May 2019, 18 ONc 1/19w, p. 9 (n50) with further references, Austrian Supreme Court, 23 July 2020, 18 ONc 1/20x, p. 12, [available in the RIS](#).

⁵³ 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](#).

⁵⁴ Austrian Supreme Court, 15 May 2019, 18 ONc 1/19w (n50).

⁵⁵ Austrian Supreme Court, 23 July 2020, 18 ONc 1/20x (n52).

⁵⁶ Austrian Supreme Court, 23 July 2020, 18 ONc 1/20x-9 (n52); Austrian Supreme Court, 15 May 2019, 18 ONc 1/19w (n50).

⁵⁷ Austrian Supreme Court, 23 July 2020, 18 ONc 1/20x-9 (n52).

⁵⁸ Christian Hausmaninger in *Zivilprozessgesetze* § 588 ZPO para. 67/1 (n4); Austrian Supreme Court, 19 April 2016, 18 ONc 3/15 h (n51); Austrian Supreme Court, 13 November 2014, 18 ONc 5/14a, SZ 2014/105 = JBI 2015, 122 = ecollex 2015/111, [available in the RIS](#); Austrian Supreme Court, 5 August 2014, 18 ONc 1/14p, [available in the RIS](#).

the non-disclosure is.⁵⁹ 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.⁶⁰

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.⁶¹ 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.

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.⁶² 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.⁶³ 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).

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

⁵⁹ Austrian Supreme Court, 5 August 2014, 18 ONc 1/14p, p. 27 (n58); Austrian Supreme Court, 19 April 2016, 18 ONc 3/15h, pp. 8-9 (n51).

⁶⁰ Austrian Supreme Court, 5 August 2014, 18 ONc 1/14p, pp. 27, 29 (n58).

⁶¹ Section 589(2) ACCP.

⁶² 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](#).

⁶³ See Christian Hausmaninger in *Zivilprozessgesetze* § 587 ZPO paras. 131-139 (n4).

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. 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, the courts may issue *ex parte* measures (see Question 4.5.4. below).⁶⁴ 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.⁶⁵ The agreement on institutional arbitration rules amounts to a complete exclusion of the non-mandatory procedural rules of the ACCP.⁶⁶ In the absence of a party agreement, the arbitral procedure is governed by the provisions of the ACCP.⁶⁷ 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.⁶⁸ 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.⁶⁹ 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.⁷⁰ 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.⁷¹

⁶⁴ See ErläutRV 1158 BlgNR 22. GP p. 16 (n10); Christian Hausmaninger in *Zivilprozessgesetze* § 593 ZPO para. 62 (n4); Christian Hausmaninger in *Zivilprozessgesetze* § 585 ZPO para. 15 (n4).

⁶⁵ Section 594(1) ACCP; see ErläutRV 1158 BlgNR 22. GP p. 17 (n10).

⁶⁶ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO paras. 79-80 (n4).

⁶⁷ ErläutRV 1158 BlgNR 22. GP p. 17 (n10); Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 90 (n4).

⁶⁸ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 3 (n4); see also Franz T. Schwarz in *Schiedsverfahrensrecht II* paras. 8/3 and 8/20 (n48).

⁶⁹ Franz T. Schwarz in *Schiedsverfahrensrecht II* paras. 8/286-8/301 (n4848).

⁷⁰ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 134 (n4).

⁷¹ Christian Hausmaninger in *Zivilprozessgesetze* § 604 ZPO para. 41 (n4); Christian Hausmaninger in *Zivilprozessgesetze* § 606 ZPO para. 52 (n4); 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 (n39Error! Bookmark not defined.).

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.⁷²

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.⁷³

The ACCP is silent on the conditions for holding hearings remotely. In July 2020, the Austrian Supreme Court rendered a landmark decision clarifying that remote hearings are generally possible even against the objection of a party.⁷⁴ The court held that conducting a hearing via videoconference does not *per se* violate the principles of fair treatment of the parties or the right to be heard. According to the court, holding a hearing via videoconference also does not violate Article 6 of the European Convention on Human Rights (“ECHR”) even when one party objects to such a hearing. Remote hearings are thus generally permissible. According to the Court, Article 6 ECHR encompasses not only the right to be heard, but also the right to access to justice. Particularly in times of a pandemic, conducting proceedings via videoconference allows to reconcile the right to be heard and the right to an effective access to justice.

While the Austrian Supreme Court’s decision was undoubtedly influenced by the restrictions brought about by the Covid-19 pandemic, it is to be expected that the court’s acceptance of remote hearings will not change even after the pandemic has subsided.

4.5.4. Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Section 593(1) ACCP empowers the arbitral tribunal to issue interim measures “*it deems necessary in respect of the subject-matter in dispute if the enforcement of the claim were otherwise frustrated or significantly impeded, or if there were a risk of irreparable harm.*” The arbitral tribunal’s power to issue interim measures may be excluded by a party agreement. Interim measures may only be granted upon the request of a party and after hearing the other party. An arbitral tribunal may thus not issue *ex parte* measures.⁷⁵

The ACCP does not contain further conditions for the grant of interim measures. In particular, the standard of proof to be applied by the arbitral tribunal is not defined in the arbitration law. Arbitrators are free to adopt the standard of proof they deem appropriate.⁷⁶ Arbitrators may request a party to provide appropriate security as a condition for the grant of an interim measure (section 593(1) ACCP).

⁷² Cf. Martin Platte in *Arbitration Law of Austria* Section 599 para. 3 (n39); Christian Hausmaninger in *Zivilprozessgesetze* § 599 ZPO para. 107 (n4).

⁷³ 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 (n4).

⁷⁴ Austrian Supreme Court, 23 July 2020, 18 Onc 3/20s, [available in the RIS](#) (n53); Maxi Scherer et al., *In a ‘First’ Worldwide, Austrian Supreme Court Confirms Arbitral Tribunal’s Power to Hold Remote Hearings Over One Party’s Objection and Rejects Due Process Concerns*, Kluwer Arbitration Blog post dated 24 October 2020, available at: <http://arbitrationblog.kluwerarbitration.com/2020/10/24/in-a-first-worldwide-austrian-supreme-court-confirms-arbitral-tribunals-power-to-hold-remote-hearings-over-one-partys-objection-and-rejects-due-process-concerns/>.

⁷⁵ Christian Hausmaninger in *Zivilprozessgesetze* § 593 ZPO para. 62 (n4). Gerold Zeiler, *Schiedsverfahren* (2. Ed., 2014) § 593 ZPO para. 32.

⁷⁶ Christian Hausmaninger in *Zivilprozessgesetze* § 593 ZPO para. 65 (n4). Gerold Zeiler, *Schiedsverfahren* § 593 ZPO para. 29 (n75).

The ACCP does not define or restrict the types of interim measures an arbitral tribunal may issue.⁷⁷ Anti-suit injunctions are generally considered permissible under Austrian arbitration law.⁷⁸ Interim measures issued by arbitral tribunals having their seat in or outside of Austria are enforceable by the Austrian courts (section 593(3) ACCP). The courts may refuse to enforce an interim measure if the measure is tainted by a ground allowing to set aside an arbitral award (for interim measures issued by an arbitral tribunal seated in Austria) or a ground for refusing recognition and enforcement of an arbitral award (for interim measures issued by an arbitral tribunal seated outside of Austria).

Austrian courts may enforce interim measures issued by arbitral tribunals that are unknown to Austrian state court proceedings.⁷⁹ 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.⁸⁰ 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.⁸¹ 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.⁸²

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.⁸³

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.⁸⁴ 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

⁷⁷ Christian Hausmaninger in *Zivilprozessgesetze* § 593 ZPO para. 53 (n4); Gerold Zeiler, *Schiedsverfahren* § 593 ZPO para. 21 (n75).

⁷⁸ Christian Hausmaninger in *Zivilprozessgesetze* § 593 ZPO para. 58/1 (n4).

⁷⁹ Christian Hausmaninger in *Zivilprozessgesetze* § 593 ZPO para. 53 (n4).

⁸⁰ Christian Hausmaninger in *Zivilprozessgesetze* § 599 ZPO paras. 1, 43 (n4).

⁸¹ Franz T. Schwarz in *Schiedsverfahrensrecht II* para. 8/331 (n48).

⁸² Austrian Supreme Court, 15 January 2020, 18 OCg 9/19a, p. 8, [available in the RIS](#), with further references.

⁸³ Franz T. Schwarz in *Schiedsverfahrensrecht II* para. 8/331 (n48).

⁸⁴ Legal Rule RS0126091, [available in the RIS](#); Austrian Supreme Court, 30 June 2010, 7 Ob 111/10i, p. 11, [available in the RIS](#).

tactic. The arbitral tribunal may also decide against holding a hearing when an oral hearing would be pure formalism.⁸⁵

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”)⁸⁶ 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 agreed by the parties or, in any event, from the pendency of legal proceedings. The default compound interest rate is 4% p.a.⁸⁷

Pursuant to section 54a ACCP, it is possible for a party to claim interest on awarded costs.⁸⁸ 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.⁸⁹ 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. 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.⁹⁰ 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.⁹¹ 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

⁸⁵ Christian Hausmaninger in *Zivilprozessgesetze* § 598 ZPO para. 40 (n4); Austrian Supreme Court, 15 January 2020, 18 OCg 9/19a, p. 10 (n82).

⁸⁶ Allgemeines Bürgerliches Gesetzbuch [ABGB] [Civil Code] Justizgesetzsammlung [JGS] No. 946/1811, as amended, [available in the RIS](#).

⁸⁷ Daphne Aichberger-Beig in *ABGB-ON* (Andreas Kletečka & Martin Schauer eds., 2019) § 1000 paras. 4-5.

⁸⁸ 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](#).

⁸⁹ Cf. Michael Bydlinski in *Zivilprozessgesetze* § 54a ZPO para. 4 (n4).

⁹⁰ Section 609 (3) – (5) ACCP.

⁹¹ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 117 (n4).

procedural decisions and arbitral awards.⁹² According to the Austrian Supreme Court, the arbitrators' liability is at the outset restricted to cases where the arbitral award is set aside.⁹³

The arbitrators' liability has to be assessed in accordance with the general principles of Austrian tort law.⁹⁴ 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.⁹⁵ 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.⁹⁶

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)⁹⁷ to the extent permissible under Austrian law. Such waivers are regularly found in institutional arbitration rules.⁹⁸ 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.⁹⁹ 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.¹⁰⁰

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.¹⁰¹ Contrary to court proceedings, the false testimony of a witness in arbitration proceedings is not *per se* punishable under the Austrian Criminal Code ("*Strafgesetzbuch*").¹⁰² 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.

⁹² 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).

⁹³ Austrian Supreme Court, 17 October 1928, 3 Ob 573/28, ZBl 1929, 79 (n92); Austrian Supreme Court, 6 June 2005, 9 Ob 126/04a, pp. 6-7 (n92); 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 (n4); *Bollenberger in Schiedsverfahrensrecht II* para. 14/58 (n48).

⁹⁴ Austrian Supreme Court, 6 June 2006, 9 Ob 126/04a (n92); Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 118 (n4); *Bollenberger in Schiedsverfahrensrecht II* para. 14/58 (n48).

⁹⁵ See *Bollenberger in Schiedsverfahrensrecht II* para. 14/63 (n48).

⁹⁶ Heinz Krejci, *Zur Schiedsrichterhaftung*, 3 ÖJZ 2007 87, 90-97 (2007); Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO paras. 120-121 (n4); *Bollenberger in Schiedsverfahrensrecht II* para. 14/63 (all with further references) (n48).

⁹⁷ *Bollenberger in Schiedsverfahrensrecht II* para. 14/65 (n48); Austrian Supreme Court, 17 February 2014, 4 Ob 197/13v (n93).

⁹⁸ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO paras. 127-128 (n4); Article 41 ICC Rules; Article 46 Vienna Rules; Article 45 DIS Rules; Article 31 LCIA Rules; Article 16 UNCITRAL Arbitration Rules.

⁹⁹ Christian Hausmaninger in *Zivilprozessgesetze* § 594 ZPO para. 128 (n4); *Bollenberger in Schiedsverfahrensrecht II* para. 14/65 (n48).

¹⁰⁰ Austrian Supreme Court, 22 March 2016, 5 Ob 30/16x, p. 4 (n93); see, also, Heinz Krejci, *Zur Schiedsrichterhaftung* 96 (n96).

¹⁰¹ See sections 304-309, 64(2), (2a) lit b, 74(1) number 4c Austrian Criminal Code.

¹⁰² *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.

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.¹⁰³ 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.¹⁰⁴ 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.¹⁰⁵

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.¹⁰⁶ 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.¹⁰⁷ 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.¹⁰⁸

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*).¹⁰⁹

¹⁰³ Christian Hausmaninger in *Zivilprozessgesetze* § 606 ZPO, para. 80 (n4Error! Bookmark not defined.) with further references.

¹⁰⁴ Hubertus Schumacher in *Schiedsverfahrensrecht II*, para. 10/277 (n48).

¹⁰⁵ Hubertus Schumacher in *Schiedsverfahrensrecht II*, para. 10/280 (n48).

¹⁰⁶ Christian Hausmaninger in *Zivilprozessgesetze* § 611 ZPO, para. 195 (n4) with further references; Dietmar Czernich, *Der Vorwegverzicht auf die Anfechtung des Schiedsspruchs – zugleich ein Beitrag zur Stellung des Schiedsverfahrens im österreichischen Recht* 138(2) JBl 69 (2016).

¹⁰⁷ Christian Hausmaninger in *Zivilprozessgesetze* § 611 ZPO, para. 196 (n4) with further references.

¹⁰⁸ Christian Hausmaninger in *Zivilprozessgesetze* § 611 ZPO para. 196 (n4); Austrian Supreme Court, 24 August 2011, 3 Ob 65/11x, p. 22, [available in the RIS](#).

¹⁰⁹ 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](#).

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 arbitral proceedings are governed by Austrian law. However, it is not a prerequisite for the validity of the award.¹¹⁰ 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 requires an application by the award creditor (or their legal successor). It is disputed whether the debtor is also entitled to file an application.¹¹¹ The requirements for the recognition of awards are set out in Section 406 of the Austrian Enforcement Act (“Exekutionsordnung”, “**Enforcement Act**”)¹¹² and are modelled after the requirements stipulated in the New York Convention and other relevant international treaties 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.¹¹³ 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.¹¹⁴ 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.

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.¹¹⁵ Thus, Austrian courts may apply statutes of limitation contained in foreign laws in proceedings for the enforcement of foreign awards.¹¹⁶

¹¹⁰ Legal Rule RS0045242, [available in the RIS](#) ; Legal Rule RS0045225, [available in the RIS](#).

¹¹¹ See Frauenberger-Pfeiler, *Die Vollstreckung aufgrund ausländischer Titel*, 1 JAP 63, 64 (1996/1997); Michael Slonina in *Kommentar zur Exekutionsordnung* (Peter Angst & Paul Oberhammer eds., 2015) § 83 para. 11; Legal Rule RS0116461, [available in the RIS](#) ; Austrian Supreme Court, 4 May 2002, 3 Ob 18/02x, p. 7, [available in the RIS](#) ; Gerold Zeiler, *Austrian Arbitration Law* para. 614-13 (n39).

¹¹² Exekutionsordnung [EO] [Enforcement Act], Reichsgesetzblatt [RGBL] No. 79/1896, [available in the RIS](#).

¹¹³ 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 (n108), respectively; see, for example, Article 36(4) VIAC Rules.

¹¹⁴ Austrian Supreme Court, 26 April 2006, 3 Ob 211/05h, [available in the RIS](#).

¹¹⁵ Austrian Supreme Court, 21 March 2001, 3 Ob 172/00s, p. 7, [available in the RIS](#).

¹¹⁶ 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](#).

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.¹¹⁷ 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.¹¹⁸

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.¹¹⁹ 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.¹²⁰

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

¹¹⁷ Article VI New York Convention (applies during the stage of recognition), section 411(5) AEA (applies during enforcement); see Austrian Supreme Court, 14 March 2012, 3 Ob 248/11h, pp. 5-6, [available in the RIS](#).

¹¹⁸ Legal Rule RS0127122, [available in the RIS](#).

¹¹⁹ 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](#).

¹²⁰ Austrian Supreme Court, 20 October 1993, 3Ob117/93; 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.

contingency fees and *pactum de quota litis* arrangements are prohibited and unenforceable.¹²¹ 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.¹²² Despite the prohibition of *pacta de quota litis*, lawyers are allowed to agree on alternative fee arrangements stipulating success fees.¹²³

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. 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.¹²⁴ The Austrian Supreme Court has so far not decided on this issue. Depending on the circumstances of the case, the relationship between the attorney and a third-party funder may be qualified as contrary to the prohibition of contingency fees and *pacta de quota litis* arrangements.¹²⁵

7. 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.¹²⁶ 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.¹²⁷ 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.¹²⁸

¹²¹ Section 879 ACC; Rechtsanwaltsordnung [RAO] [Code of Professional Conduct for Lawyers], Reichsgesetzblatt [RGBl] No. 96/1868, as amended, section 16, [available in the RIS](#).

¹²² Disziplinarstatut für Rechtsanwälte und Rechtsanwaltsanwärter [DSt] [Disciplinary Statute for Lawyers and Lawyers in Training], Bundesgesetzblatt [BGBl] No. 474/1990, as amended, section 1, [available in the RIS](#).

¹²³ For further information, see Marcel Pilshofer, *Das rein erfolgsabhängige Honorar - zulässige Form anwaltlicher Entlohnung?*, 4 AnwBl 177 (2011).

¹²⁴ Cf. ABGB-ON § 879 para. 252/1.

¹²⁵ Legal Rule RS0104683, [available in the RIS](#); Austrian Supreme Court, 27 February 2013, 6 Ob 224/12b, pp. 11-12, [available in the RIS](#).

¹²⁶ Christian Hausmaninger in *Zivilprozessgesetze* § 599 ZPO para. 40 (n4).

¹²⁷ See ErläutRV 1158 BlgNR 22. GP p. 9 (n10).

¹²⁸ See Hanzl, *Handbuch Blockchain und Smart Contracts* Chapter 5.18.4.4.2 (2020) with further references.

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 validates* approach of Article VII(1) of the Convention, an arbitration agreement is considered valid if it either meets the form requirements of Art II 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*”. 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.¹²⁹ 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.¹³⁰ 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.

¹²⁹ Austrian Supreme Court, 3 September 2008, 3 Ob 35/08f, p. 13, [available in the RIS](#).

¹³⁰ Legal Rule RS0124091, [available in the RIS](#); Austrian Supreme Court, 3 September 2008, 3 Ob 35/08f, p. 13 (n129) (with further references).

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, Paul Oberhammers (eds.) *Kommentar zur Exekutionsordnung* (2015).
- Christian Hausmaninger, §§ 577 ff in Hans W. Fasching, Andreas Konecny (eds.), *Kommentar zu den Zivilprozessgesetzen*, Manz (2nd ed., 2016)
- Christoph Liebscher, Paul Oberhammer and Walter H. Rechberger (eds), *Schiedsverfahrensrecht I*, Verlag Österreich (2011)
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- 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, 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, *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>