

## GUIDE TO ARBITRATION PLACES (GAP)

# GERMANY

CHAPTER PREPARED BY

TILMAN NIEDERMAIER, AND MARCUS WEILER  
OF CMS HASCHE SIGLE



### FOR FURTHER INFORMATION

[GAP TABLE OF CONTENTS](#) | [GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS](#) | [FULL GAP ONLINE](#)

EN [DELOS MODEL CLAUSES](#)  
ES [DELOS CLÁUSULAS MODELO](#)  
FR [DELOS CLAUSES TYPES](#)  
PT [DELOS CLÁUSULAS MODELO](#)

[SAFESEATS@DELOSDR.ORG](mailto:SAFESEATS@DELOSDR.ORG) | [DELOSDR.ORG](https://DELOSDR.ORG)

### JURISDICTION INDICATIVE TRAFFIC LIGHTS

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

VERSION: 4 MAY 2025 (v01.04)

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

Germany is an attractive option for domestic as well as international arbitration proceedings as it is known to provide an arbitration-friendly legal environment. The jurisprudence of German courts is consistent, and the German Civil Code of Procedure provides a functional and balanced arbitration law closely modelled on the UNCITRAL Model Law. The German Institute for Arbitration ("DIS") is a well-functioning arbitration institution with modern rules (including Supplementary Rules for Expedited Proceedings and for Corporate Law Disputes) and an increasing (international) caseload.

Key places of arbitration in the jurisdiction?	Frankfurt, Hamburg, Munich, and Düsseldorf. Berlin, as capital city, has the potential to become an important seat for international arbitrations.
Civil law / Common law environment? (if mixed or other, specify)	Civil law; the German arbitration law is contained in the 10 <sup>th</sup> book of the Civil Code of Procedure ("ZPO").
Confidentiality of arbitrations?	German arbitration law does not provide for express confidentiality obligations. Hearings are usually held in closed session and awards are not published.
Requirement to retain (local) counsel?	Common but no legal requirement.
Ability to present party employee witness testimony?	Parties may submit witness testimonies of their employees. It lies in the arbitral tribunal's discretion to weigh such evidence.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Parties may choose to hold meetings at a different venue. Unless the parties have agreed on a specific venue, the tribunal has discretion to decide where to hold meetings.
Availability of interest as a remedy?	Interest is a matter of the applicable substantive law. Compounded interest applied under foreign law does not violate German public policy (" <i>ordre public</i> ").
Ability to claim for reasonable costs incurred for the arbitration?	The arbitral tribunal has discretion in respect of the allocation of costs but must take into consideration the circumstances of the case.
Restrictions regarding contingency fee arrangements and/or third-party funding?	German lawyers (" <i>Rechtsanwälte</i> ") may only enter into contingency fee agreements under very limited conditions. Third party funding is not codified in German arbitration law, but it is accepted and increasingly used.
Party to the New York Convention?	Yes, with reservations with regard to reciprocity, commercial disputes and retroactive application. Germany is a Member State since 1961.
Party to the ICSID Convention?	Yes. Germany is a Member State since 1965.
Compatibility with the Delos Rules?	Yes.

Default time-limitation period for civil actions (including contractual)?	Pursuant to § 195 of the German Civil Code (“BGB”), the default time-limitation is three years. Pursuant to § 199 BGB, the period starts to run at the end of the year in which the claim arose and the claimant had or reasonably could have had knowledge of the claim.
Other key points to note	ϕ
<a href="#">World Bank, Enforcing Contracts: Doing Business</a> score for 2020, if available?	Germany ranks 13 <sup>th</sup> with a score of 74.1
<a href="#">World Justice Project, Rule of Law Index: Civil Justice</a> score for 2024, if available?	Germany ranks 5 <sup>th</sup> out of 142 countries with a score of 0.82.

## ARBITRATION PRACTITIONER SUMMARY

The revision of the German arbitration law in 1998 has strengthened the focus on party autonomy, giving the parties considerable freedom in structuring the arbitration proceedings according to their needs. The German arbitration law is modeled closely on the 1985 UNCITRAL Model Law. It applies regardless of whether the arbitration is domestic or international. Furthermore, the dispute need not be of a commercial nature. Only very few mandatory statutory provisions limit the parties' freedom of contract. In 2016, the Ministry of Justice and Consumer Protection has installed a working group to review the German arbitration law in light of the 2006 amendments to the UNCITRAL Model Law. In 2024, the Federal Government introduced a draft law proposing several amendments to the German arbitration law for plenary deliberation. As of April 2025, the draft law has not been adopted by Parliament.

Most arbitration-related matters that require the assistance of state courts are handled by the German Higher Regional Courts. The German District Courts may assist arbitral tribunals in taking evidence. They do not act as a full court of appeal but limit their review potential grounds for annulment or refusal of recognition within a strictly limited scope (mainly questions of due process and public policy). The courts are considered to be efficient when they are requested to decide on arbitration matters. Germany has ratified the New York Convention ("NYC") without any reservations. Courts tend to adhere strictly to its provisions.

Date of arbitration law?	German arbitration law is found at §§ 1025 - 1066 ZPO and was last revised in 1998.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The German arbitration law is based in large parts on an adoption of the 1985 UNCITRAL Model Law with only few minor amendments.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Ordinary courts (the Higher Regional Courts as first instance) handle jurisdictional challenges and the annulment and enforcement of awards. Within these courts, all arbitration-related cases are regularly assigned to one specific division (" <i>Kammer</i> ") ensuring a certain level of knowledge and experience. District Courts may assist the arbitral tribunal in taking evidence upon application of the arbitral tribunal or of a party with consent of the arbitral tribunal.
Availability of <i>ex parte</i> pre-arbitration interim measures?	The courts may grant <i>ex parte</i> interim measures
Courts' attitude towards the competence-competence principle?	The arbitral tribunal may rule on its own jurisdiction. If the arbitral tribunal rules on jurisdiction as a preliminary question, any party may seize the state courts (as envisaged by the UNCITRAL Model Law).
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Pursuant to § 1054(2) ZPO, the award must state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given. Accordingly, a subsequent reasoning of the award would require the consent of the parties.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Only the grounds set out in the New York Convention.

Do annulment proceedings typically suspend enforcement proceedings?	Yes. However, pursuant to § 1063(3) ZPO, upon application by the party requesting enforcement, a judge may issue, without prior hearing of the party opposing the application for enforcement, an order to the effect that, until a decision on the request for annulment has been made, the applicant may pursue enforcement of the award. Such enforcement, however, may not extend beyond measures of protection.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	The question whether German courts are bound by the foreign court's set-aside decision is not finally settled. In the past, they have regularly respected the foreign court's decision without reviewing the merits <i>de novo</i> . In a recent decision, the German Federal Supreme Court (BGH) addressed the opposite scenario where a foreign court had rejected a set-aside application. It held that such a decision has no binding effect on domestic enforceability proceedings.
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?	Unless the parties have agreed on document-only proceedings, pursuant to § 1047 ZPO, the arbitral tribunal must hold a hearing at an appropriate stage of the proceedings, if so requested by a party. German arbitration law does not expressly provide that such hearing(s) must take place in person. Therefore, the decision of an arbitral tribunal to hold a hearing remotely would not be a basis for annulment or objection to enforcement <i>per se</i> . However, the arbitral tribunal must ensure that the parties' procedural rights, in particular the right to be heard and the right to equal treatment, are at all times observed.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Subject to international law, the general rules apply. As a general principle, a state that made an agreement to arbitrate is considered to have thereby waived its defence of sovereign immunity.
Is the validity of blockchain-based evidence recognised?	Yes.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	Arbitration agreements recorded on a blockchain are recognized in b2b transactions. However, this is not the case if a consumer is party to the transaction.  Arbitral awards need to be signed in person.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	A court would recognize an arbitral agreement recorded on a blockchain as original.  A court would not recognize an arbitral award recorded on a blockchain as original.
Other key points to note?	<ul style="list-style-type: none"> <li>• Partial awards are recognized and enforced in accordance with the NYC.</li> <li>• Duration of proceedings to obtain the enforcement of an award: usually between three months and one year (possibly longer when the German Supreme Court ("BGH") is seized).</li> </ul>

	<ul style="list-style-type: none"> <li>• Arbitration agreements are to be signed by all parties; there are stricter form requirements for particular groups of individuals (<i>e.g.</i>, consumers).</li> <li>• German courts have a long-standing tradition of respecting arbitration agreements and exercising restraint in interfering with decisions by arbitral tribunals.</li> </ul>
--	--

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version? If yes, what key modifications if any have been made to it? If no, what form does the arbitration law take?

The German arbitration law is closely modelled on the UNCITRAL Model law (1985 version). It is contained in the 10<sup>th</sup> book in §§ 1025-1066 of the Code of Civil Procedure ("ZPO") and applies not only to commercial cases but to any kind of arbitrations.<sup>1</sup>

Due to the broad scope of application, the legislator included some amendments and supplements to the UNCITRAL Model law, the most salient of which are outlined below:

- If the claimant or respondent is seated (or habitually resides) in Germany, German courts may be seized for assistance in the composition of the tribunal or the challenge of an arbitrator even when the seat of the arbitration is yet to be determined, *i.e.*, when it is unclear whether German arbitration law would indeed apply.<sup>2</sup>
- As a general rule, an arbitration agreement must be contained either in a document signed by the parties or in (written or electronic) communication exchanged between the parties.<sup>3</sup> While German arbitration law permits a tacit acceptance to a document containing an arbitration agreement under specific conditions,<sup>4</sup> there are stricter form requirements for arbitration agreements involving a consumer.<sup>5</sup> The record or document containing the arbitration agreement must be hand-signed by the parties. The written form may be replaced by a qualified electronic form.<sup>6</sup> The record or (electronic) document may not contain agreements other than those making reference to the arbitration proceedings except if the agreement is recorded by a notary. The currently discussed reform of the German arbitration law would lift the form requirements in the b2b context so that arbitration agreements could then also be concluded verbally (see chapter 8).
- An application may be made to the court to declare whether or not arbitration is admissible prior to the composition of the arbitral tribunal. Yet the arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the application is pending before the court.<sup>7</sup>
- If an arbitration agreement puts a party at a disadvantage regarding the number of arbitrators appointed by the other party/parties, the disadvantaged party may seize the court to remedy the imbalance.<sup>8</sup>
- If an arbitrator refuses to take part in a decision, the other arbitrators may decide without him unless the parties have agreed otherwise.<sup>9</sup>

<sup>1</sup> English translations are available at [www.gesetze-im-internet.de/englisch\\_zpo/index.html](http://www.gesetze-im-internet.de/englisch_zpo/index.html) and <http://www.disarb.org/de/51/materialien/german-arbitration-law-98-id3>.

<sup>2</sup> § 1025(3) ZPO.

<sup>3</sup> § 1031(1) ZPO.

<sup>4</sup> § 1031(2) ZPO.

<sup>5</sup> § 1031(5) ZPO.

<sup>6</sup> § 126a BGB.

<sup>7</sup> § 1032(2) ZPO.

<sup>8</sup> § 1034(2) ZPO.

<sup>9</sup> § 1052(2) ZPO.

- Other than the Model Law, the German arbitration law contains an express provision on the allocation of costs (see below).<sup>10</sup>
- If an arbitral award is set aside, the arbitration agreement is regularly reinstated.<sup>11</sup> Upon request by a party, German courts may remit a matter to the arbitral tribunal after setting the award aside.<sup>12</sup>

## 1.2 When was the arbitration law last revised?

The German arbitration law was reformed in 1997. The new law entered into force on 1 January 1998. There are currently plans to reform the German arbitration law (see chapter 8).

## 2. The arbitration agreement

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

The approach of the courts, when determining the law applicable to the arbitration agreement, is not always consistent.

German courts have traditionally followed two approaches:

1. Applying the law chosen by the parties and, in the absence of a choice of law, the law of the place of arbitration to the arbitration agreement pursuant to Art. V(1)(a) NYC and § 1059(2) no. 1 lit. a ZPO.<sup>13</sup>
2. Applying by analogy the rules of private international law relating to contracts which means that the arbitration agreement is governed by the law chosen by the parties or, in the absence of a choice of law, the law of the country with which it is most closely connected.<sup>14</sup>

While the BGH traditionally followed the second approach, it has recently changed its jurisprudence due to the explicit exclusion of arbitration agreements from the scope of the Rome I Regulation. The BGH now resorts to Art. V(1)(a) NYC and applies the law chosen by the parties and, in the absence of such choice, the law of the place of arbitration.<sup>15</sup>

### 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?

Pursuant to § 1043(1) ZPO, where the parties have not agreed on the seat of arbitration, the seat will be determined by the arbitral tribunal. In this respect, regard is to be had to the circumstances of the case, including the suitability of the place for the parties. However, before determining the seat of the arbitration based on objective circumstances, a court would look at whether an implied agreement between the parties exists. It is a matter of contract interpretation whether by referring to given "place" or "venue" the parties intended to also determine the seat of arbitration in the legal sense. In the absence of particular circumstances, this is generally considered to be the case.

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

Yes.

<sup>10</sup> § 1057 ZPO.

<sup>11</sup> § 1059(5) ZPO.

<sup>12</sup> § 1059(4) ZPO.

<sup>13</sup> OLG München, BeckRS 2018, 11663, para. 58; LG München I, SchiedsVZ 2014, 100, 105; *Geimer*, in: *Zöller* (ed.), *Zivilprozessordnung*, 35<sup>th</sup> ed. 2024, § 1029 para. 107.

<sup>14</sup> BGH SchiedsVZ 2011, 46, 48 (in respect of conflict of law rules preceding the Rome I Regulation); BGH NJW 1964, 591, 592; OLG Hamm, SchiedsVZ 2014, 38, 42.

<sup>15</sup> BGH SchiedsVZ 2021, 97, 102; BGH SchiedsVZ 2023, 289, 300 para. 97.



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

The arbitration agreement must be contained either in a document signed by the parties or in an exchange of letters, telefaxes, telegrams or other means of telecommunication which provide a record of the agreement.<sup>16</sup> This form requirement is deemed to have been complied with if the arbitration agreement is contained in a document transmitted from one party to the other party or by a third party to both parties and – if no objection was timely raised – the contents of such document are considered to be part of the contract in accordance with common usage.<sup>17</sup>

A document fulfilling the above form requirements can incorporate an arbitration clause by reference to another document, *e.g.*, general terms and conditions.<sup>18</sup>

Special form requirements apply to arbitration agreements in which one party is a consumer. Such arbitration agreements must be contained in a record or document personally signed by the parties.<sup>19</sup>

In international cases, the form requirement may be governed by international conventions, in particular Art. II(2) NYC and Art. 1(2) lit. a of the 1961 Geneva Convention.

The BGH has interpreted Art. VII(1) NYC as to allow for the application of national law to the extent that its form requirements are more favourable to arbitration than the New York Convention.<sup>20</sup>

As discussed in Chapter 8 below, the draft bill for the reform of the German Arbitration Law would permit arbitration agreements to be concluded verbally in the b2b context. The stricter form requirements for arbitration agreements involving customers would remain unaffected under the draft bill.

## 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 accordance with the principle of privity of contract, arbitration agreements only bind the persons which are party to it. In limited circumstances, third persons may become party to an arbitration agreement as a matter of law, rather than as a result of express consent.

The arbitration clause binds successors in title such as heirs or assignees, even if the successor does not formally accede to the arbitration agreement.<sup>21</sup> The assignment itself does not have to follow the form requirements of an arbitration agreement.<sup>22</sup> The arbitration clause of a civil law partnership ("GbR") and a general partnership ("oHG") are also binding on the partners liable for the partnership's liabilities.<sup>23</sup>

An insolvency administrator is bound by an arbitration agreement in which the insolvent entity has entered prior to the opening of insolvency proceedings.<sup>24</sup>

An extension of arbitration agreements to third parties pursuant to the "group of companies" doctrine has to date not been recognized by German courts. In a recent decision, the BGH expressly stated that the

<sup>16</sup> § 1031(1) ZPO.

<sup>17</sup> § 1031(2) ZPO.

<sup>18</sup> § 1031(3) ZPO.

<sup>19</sup> § 1031(5) ZPO.

<sup>20</sup> BGH SchiedsVZ 2010, 332, 333.

<sup>21</sup> BGH NJW 1998, 371; NJW 2000, 2346; BayObLGZ 1999, 255, 266 *et seq.*; BayObLG BeckRS 2020, 35340 para. 48; *Wolff/Eslami*, in: *Vorwerk/Wolff*, BeckOK ZPO, 55<sup>th</sup> ed. 2022, § 1029 para. 16.

<sup>22</sup> BGH NJW 1998, 371; BayObLG SchiedsVZ 2004, 45, 46 (in respect of a „Kommanditgesellschaft“); *Geimer*, in: *Zöller* (ed.), *Zivilprozessordnung*, 35<sup>th</sup> ed. 2024, § 1029 para. 68.

<sup>23</sup> BGH NJW-RR 1991, 423, 424; *Saenger*, *Zivilprozessordnung*, 10<sup>th</sup> ed. 2023, § 1029 para. 23.

<sup>24</sup> BGH NJW 2017, 488, 489 para. 10; BGH SchiedsVZ 2018, 127, 128 para. 11; BGH NJW 2009, 1747, 1748; BGH SchiedsVZ 2004, 259, 261.

doctrine was not part of German arbitration law.<sup>25</sup> The BGH has, however, held that the doctrine – when applied as part of a foreign law applicable according to the rules of private international law – does not necessarily violate German public policy.<sup>26</sup>

## 2.6 Are there restrictions to arbitrability?

Under German law, as a matter of principle, arbitration is allowed for all disputes over pecuniary matters.<sup>27</sup> Regarding non-pecuniary claims, an arbitration agreement is effective insofar as the parties to the dispute are entitled to conclude a settlement agreement in respect of the subject matter of the dispute.<sup>28</sup> Some limited exceptions apply to this principle (see below).

### 2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

Arbitration agreements relating to disputes over the existence of a lease of residential accommodations within Germany are null and void.<sup>29</sup>

Labour law disputes, save for limited exceptions, cannot be referred to arbitration.<sup>30</sup>

In a series of four decisions (*Schiedsfähigkeit I-IV*), the BGH has established specific limits to the arbitrability of certain types of shareholder disputes.<sup>31</sup> When disputes arise between certain shareholders and a stock company with regard to the validity of shareholder resolutions, court rulings declaring shareholder resolutions invalid bind all shareholders (*erga omnes*) regardless of whether they have been a party to the court proceedings.<sup>32</sup> This is also applied to limited liability companies (GmbH) by way of analogy. Since January 2024, this now also applies to commercial partnerships (OHG, KG).<sup>33</sup> Due to the binding effect on shareholders that are not necessarily parties to the arbitration proceedings, the BGH has developed a set of criteria that must be fulfilled for such disputes to be submitted to arbitration and for arbitral awards to bind all shareholders: (i) all shareholders have to consent to the arbitration agreement (be it as part of the articles of association or in a separate agreement), (ii) all shareholders need to be informed about the initiation and the progress of the arbitral proceedings so they can join the proceedings at least in the capacity of an intervening party, (iii) all shareholders must be able to participate in the appointment of the arbitral tribunal if it is not selected by a neutral third party and (iv) all disputes concerning the deficient resolution have to be submitted to and decided by the same arbitral tribunal.

The DIS provides for specific rules for these shareholder disputes (DIS Supplementary Rules for Corporate Disputes) that comply with the additional criteria developed by the BGH. In practice, articles of association often refer to these supplementary rules to comply with the BGH's jurisprudence.

German competition law originally considerably limited arbitration in this field. However, following the entry into force of the revised arbitration law in 1998, the respective provisions were repealed. Today, the arbitrability of competition law disputes is generally recognized.

There is still no settled view on the arbitrability of patent disputes. The BGH is yet to rule on this matter. In a recent decision of November 2024, the BGH deliberately left this question unanswered.<sup>34</sup> It is argued that the

<sup>25</sup> BGH SchiedsVZ 2023, 228, 234 para. 67.

<sup>26</sup> BGH SchiedsVZ 2014, 151.

<sup>27</sup> § 1030(1)1 ZPO.

<sup>28</sup> § 1030(1)2 ZPO.

<sup>29</sup> § 1030(2) ZPO.

<sup>30</sup> §§ 4, 101(3) of the Labour Court Act (ArbGG).

<sup>31</sup> BGH NJW 1996, 1753; BGH NJW 2009, 1962; BGH SchiedsVZ 2017, 194; BGH SchiedsVZ 2022, 86, 88.

<sup>32</sup> § 248(1)(1) AktG.

<sup>33</sup> §§ 110, 111, 113, 114 HGB.

<sup>34</sup> BGH GRUR-RS 2024, 36252 para. 16.

exclusive competence of patent courts for the revocation of patents and the grant or revocation of a compulsory licence under § 81 PatG within the German court system is tantamount to the non-arbitrability of these disputes. Again, this is based on the reasoning that arbitral awards lack the required *erga omnes* effect of a court ruling.<sup>35</sup> According to a different view, patent disputes are arbitrable in the sense that, while the arbitral tribunal is unable to revoke a patent itself, it may still order the patent holder to apply for its deletion with the competent patent authorities (which would be an enforceable obligation).<sup>36</sup>

The opening of insolvency proceedings does not render a dispute non-arbitrable. Rather, the trustee is bound like a successor in title by an arbitration clause concluded by the debtor before entering insolvency proceedings. The defendant thus may invoke the arbitration clause where the trustee has brought a claim before state courts. Creditors must file their claims with the trustee, irrespective of whether they are covered by an arbitration agreement, as to allow for the orderly liquidation of debtor's assets. However, if the trustee disputes the claim the creditor may enforce it. In this case, if the claim is covered by an arbitration agreement, the creditor is referred to arbitration.

With regard to the arbitrability of disputes between an investor from an EU member state and another EU member state, the ECJ has decided that arbitration agreements in Intra-EU BITs<sup>37</sup> and in the Energy Charter Treaty<sup>38</sup> are incompatible with EU law. Following this jurisprudence of the ECJ, the BGH has considered arbitration agreements in intra-EU BITs and in Art. 26 ECT invalid.<sup>39</sup> The BGH has recently confirmed that the ECJ's *Achmea* decision does not apply to bilateral investment treaties concluded between EU member states and third countries.<sup>40</sup>

## 2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?

There are very few statutory limits to the capacity to conclude arbitration agreements.

Arbitration agreements on future legal disputes relating to investment services, ancillary services or financial futures and forward transactions are binding only if both parties to the agreement are merchants within the meaning of the Commercial Code (HGB) or legal persons under public law.<sup>41</sup>

## 3. Intervention of domestic courts

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

A court seized in a matter which is the subject of an arbitration agreement must, if the respondent raises an objection prior to the beginning of the hearing on the substance of the dispute, reject the action as inadmissible unless the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed.<sup>42</sup>

Where an action referred to above is pending, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.<sup>43</sup> The answer above applies to arbitrations inside or outside of the jurisdiction.

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

<sup>35</sup> Nordmeier, in: *Thomas/Putzo, Zivilprozessordnung*, 45<sup>th</sup> ed. 2024, § 1030 para. 6.

<sup>36</sup> Geimer, in: *Zöller, Zivilprozessordnung*, 35<sup>th</sup> ed. 2024, § 1030 para. 15.

<sup>37</sup> ECJ, C-284/16 (Slovak Republic v. Achmea).

<sup>38</sup> ECJ, C-741/19 (Republic Moldova v. Komstroy).

<sup>39</sup> BGH SchiedsVZ 2019, 46; BGH SchiedsVZ 2023, 289, 300.

<sup>40</sup> BGH BeckRS 2023, 37538 para. 12.

<sup>41</sup> § 101 of the Securities Trading Act (WpHG).

<sup>42</sup> § 1032(1) ZPO.

<sup>43</sup> § 1032(3) ZPO.

Germany does not have a tradition of anti-suit injunctions. In the few available decisions, German courts have refused to recognize anti-suit injunctions issued by foreign courts.<sup>44</sup> In a recent decision, the Higher Regional Court of Hamm confirmed an “anti-anti-suit-injunction” issued by a lower German court.<sup>45</sup> The injunction prevented the defendant from obtaining an anti-suit injunction from a foreign court against the continuation of German court proceedings. According to the ECJ’s *Gazprom* decision, the Brussels I Regulation does not prevent a member state from recognizing anti-suit injunctions issued by arbitral tribunals.<sup>46</sup> However, it is highly unlikely that German courts would respect such injunctions as this would run counter to the principle that German courts conduct a full review of the arbitration clause when they are asked to rule on the jurisdiction of an arbitral tribunal.

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

As a general rule, German courts will not issue anti-suit injunctions restraining proceedings brought in breach of arbitration clauses. They may grant interim measures in order to support arbitrations in foreign seats (such as freezing orders or orders to secure evidence) provided that German courts have international jurisdiction for interim relief. In respect of arbitrations under the ICSID Convention, the BGH has recently decided that German courts have jurisdiction to rule on the admissibility of arbitration proceedings prior to the composition of the tribunal pursuant to § 1032(2) ZPO.<sup>47</sup>

## **4. The conduct of proceeding**

### **4.1 Can parties retain outside foreign or be self-represented?**

Both is possible. Lawyers (“*Rechtsanwälte*”) may not be excluded from acting as authorised representatives.<sup>48</sup>

### **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?**

An arbitrator may be challenged only if circumstances give rise to justified doubts as to his impartiality or independence, or if he does not meet the prerequisites established by the parties.<sup>49</sup> In practice, German courts tend to apply the same standards as for state court judges.<sup>50</sup> The IBA Guidelines are not binding on the state courts<sup>51</sup> and not regularly referred to.

A failure to comply with the duty to disclose all relevant circumstances as to the arbitrator’s impartiality and independence may (but need not) justify a challenge of the arbitrator.<sup>52</sup> Whether the failure to disclose alone is sufficient to give rise to justifiable doubts depends on the circumstances. In any case, the failure might be an exacerbating factor in the overall assessment of whether there are justifiable doubts.

The same threshold applies to experts appointed by the arbitral tribunal.<sup>53</sup> The BGH has held that an expert’s failure to disclose all circumstances relevant to his impartiality and independence is a ground to set the award

<sup>44</sup> OLG Düsseldorf EuZW 1996, 351.

<sup>45</sup> OLG Hamm BeckRS 2023, 10005; LG Essen BeckRS 2024, 9781.

<sup>46</sup> ECJ, Judgment of 13 May 2015, C-536/13 (*Gazprom v Lithuania*).

<sup>47</sup> BGH SchiedsVZ 2023, 289.

<sup>48</sup> § 1042(2) ZPO.

<sup>49</sup> § 1036(1), (2) ZPO.

<sup>50</sup> BGH NJW 1992, 2299; OLG Frankfurt NJW-RR 2008, 801, 802.

<sup>51</sup> OLG Frankfurt, decision of 13 February 2012, 26 SchH 15/11, juris, para. 33.

<sup>52</sup> BGH WM 2019, 875, 878 paras. 23, 24; OLG Frankfurt, NJW 2008, 1325.

<sup>53</sup> § 1049(3) ZPO.

aside if (i) the award is based on the expert's testimony and (ii) the non-disclosed circumstances would have justified a challenge of the expert.<sup>54</sup>

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

A party may request the court to appoint an arbitrator if a party fails to act as required under an appointment procedure agreed upon by the parties, unless the procedure provides other means for securing the appointment. The court will intervene accordingly if the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or if a third party fails to perform any function entrusted to it under such procedure.<sup>55</sup>

When appointing an arbitrator, the court shall have due regard to any qualifications prescribed by the agreement of the parties and to other considerations necessary to secure the appointment of an independent and impartial arbitrator. In the case of appointment of a sole or third arbitrator, the court shall also take into account whether appointing an arbitrator of a nationality other than those of the parties might be advisable.<sup>56</sup>

#### **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?**

It is not incompatible with an arbitration agreement for a court to grant, before or during arbitral proceedings, a provisional or conservatory measure of protection relating to the subject-matter of the arbitration upon request by a party.<sup>57</sup>

German courts may grant *ex parte* requests.<sup>58</sup> The courts will schedule a hearing unless this would endanger the object and purpose of the interim relief.

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

§ 1042(1) ZPO enshrines the principle of equal treatment and the right of each party to an effective and fair legal hearing. Subject to the mandatory provisions of German arbitration law, the parties are free to determine the procedure themselves or by reference to a set of arbitration rules.<sup>59</sup> In the absence of an agreement by the parties and any stipulations in the German arbitration law, the arbitral tribunal shall conduct the arbitration in such manner as it considers appropriate.<sup>60</sup>

##### **4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

While there is no express provision on confidentiality, neither the arbitral proceedings nor the hearings in the arbitration are public. Furthermore, arbitrators are barred from disclosing the tribunal's deliberations,<sup>61</sup> and the lawyers involved (be it as arbitrators or counsel) must comply with professional duties of confidentiality to which they are subject under German law.<sup>62</sup>

##### **4.5.2 Does it regulate the length of arbitration proceedings?**

<sup>54</sup> BGH NZM 2020, 334, 335 para. 12; BGH, decision of 02 May 2017, I ZB 1/16, juris relying on § 1059(2) no. 1 lit. d ZPO.

<sup>55</sup> § 1035(4) ZPO.

<sup>56</sup> § 1035(5) ZPO.

<sup>57</sup> § 1033 ZPO.

<sup>58</sup> §§ 936, 922(1) ZPO.

<sup>59</sup> § 1042(3) ZPO.

<sup>60</sup> § 1042(4) ZPO.

<sup>61</sup> BGH, NJW 1957, 592.

<sup>62</sup> § 43a(2) German Federal Lawyers' Act (BRAO).

There is neither an express provision on the duration of arbitration proceedings nor a remedy against excessively lengthy proceedings. However, an arbitrator's failure or impossibility to act can be a ground for termination of the arbitrator's mandate upon the request of a party.<sup>63</sup>

#### **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?**

The parties are free to agree on the place of arbitration. In the absence of such agreement, the place of arbitration shall be determined by the arbitral tribunal which shall pay regard to the circumstances of the case, including the suitability of the place for the parties.<sup>64</sup>

The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for an oral hearing, for hearing witnesses, experts or the parties, for consultation among its members or for inspection of property or documents.<sup>65</sup>

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

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order such provisional or conservatory measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.<sup>66</sup>

There is no defined statutory threshold. German arbitration law does not include Articles 17A *et seq.* of the UNCITRAL Model Law. While some courts and commentators have held that the tribunal must apply the same threshold as state courts under German law,<sup>67</sup> others have argued that the arbitral tribunal is free to apply its own standard.<sup>68</sup> In practice, this will usually boil down to the balancing of (i) the *prima facie* case and (ii) any risk of harm that cannot be adequately repaired by monetary compensation.

The tribunal may grant interim measures *ex parte*. It may require any party to provide appropriate security in connection with such measure.

Interim measures by arbitral tribunals can be enforced by state courts. Upon application by a party, the court may permit the enforcement of an interim measure of an arbitral tribunal unless a corresponding measure of interim relief has already been petitioned with a court.<sup>69</sup> It may issue a differently worded order if this is required for the enforcement of the measure. Likewise, the court might reverse or modify the preliminary order of an arbitral tribunal upon application by one party.<sup>70</sup>

#### **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?**

The arbitral tribunal is empowered to determine the admissibility of evidence, to take evidence and to assess freely such evidence.<sup>71</sup>

There are no such restrictions on testimony by a party employee.

<sup>63</sup> § 1038(1) ZPO.

<sup>64</sup> § 1043(1) ZPO.

<sup>65</sup> § 1043(2) ZPO.

<sup>66</sup> § 1041(1) ZPO.

<sup>67</sup> OLG Saarbrücken SchiedsVZ 2007, 323, 326; *Schwab/Walter*, Schiedsgerichtsbarkeit, 7<sup>th</sup> ed. 2005, ch. 17a para. 20.

<sup>68</sup> *Seiler*, in: *Thomas/Putzo*, Zivilprozessordnung, 45<sup>th</sup> ed. 2024, § 1041 para. 2.

<sup>69</sup> § 1041(2) ZPO.

<sup>70</sup> § 1041(3) ZPO.

<sup>71</sup> § 1042(4)(2) ZPO.

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

Subject to agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted on the basis of documents and other materials.<sup>72</sup> Unless the parties have agreed that no oral hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings if requested by a party.

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

German arbitration law does not provide for any rules on the awarding of interest. If the main contract is governed by German substantive law, compounded interest may not be awarded.<sup>73</sup> If compounded interest is awarded based on the applicable foreign substantive law, this does not amount to a violation of German public policy allowing for the setting aside of the award.<sup>74</sup>

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

The arbitral tribunal shall allocate the costs of the arbitration between the parties unless the parties agree otherwise.<sup>75</sup> The cost decision is issued in the form of an arbitral award. The arbitration costs include necessary costs incurred by the parties for the proper pursuit of their claim or defence. The tribunal has discretion in its allocation but shall take the circumstances of the case, in particular the outcome of the proceedings, into consideration. Where it considers it to be appropriate an arbitral tribunal may also take into account the conduct of the parties.

### 4.6 Liability

#### 4.6.1 Do arbitrators benefit from immunity from civil liability?

Arbitrators are not completely exempt from liability. As a matter of principle, they could be held liable for breach of contract under German contract law as any other service provider. The statutory provision limiting the state's liability for its own judges<sup>76</sup> does not apply to arbitrators. In practice, either the terms of reference or the arbitration rules (e.g., § 44.2 DIS Arbitration Rules) will often contain an express limitation of liability. In the absence of such express provisions, the majority view (including the German Federal Supreme Court) assumes that the mandate of the arbitrators by the parties includes an implied liability limitation corresponding to the one of state court judges.<sup>77</sup> Consequently, arbitrators can only be held liable if their wrongful behaviour amounts to a criminal offence. The case law on this point, however, is not finally settled and does not extend to non-judicial duties of the arbitrator. This means that an arbitrator does not benefit from the limitation of liability when he wrongfully delays the proceedings,<sup>78</sup> fails to issue the award in its proper form,<sup>79</sup> breaches confidentiality, recuses himself without reason or fails to disclose circumstances relevant to his appointment.<sup>80</sup>

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

<sup>72</sup> § 1047(1) ZPO.

<sup>73</sup> § 248(1) BGB.

<sup>74</sup> OLG Hamburg, decision of 26 January 1989, 6 U 71/88, juris.

<sup>75</sup> § 1057(1) ZPO.

<sup>76</sup> § 839(2) BGB.

<sup>77</sup> BGH, NJW 1954, 176; *Musielak/Voit*, Zivilprozessordnung, 21<sup>st</sup> ed. 2024, § 1035 para. 25 for further references.

<sup>78</sup> See § 839(2) BGB.

<sup>79</sup> § 1054 ZPO.

<sup>80</sup> *Münch*, in: MüKo, Zivilprozessordnung, 6<sup>th</sup> ed. 2022, § 1035 para. 30.

There are a number of offences that arbitrators could potentially commit, in particular intentional perversion of justice<sup>81</sup> and various bribery and corruption offences.<sup>82</sup> However, none of them give rise to any particular concerns. The threshold set by the BGH for intentional perversion of justice is extremely high so that, in practice, it is hardly ever met.

## 5. The award

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

Parties can waive the requirement to provide reasons for an award.<sup>83</sup> It is also possible for parties to agree on the wording of a (settlement) award.

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

Only with respect to certain annulment grounds (see below).

More specifically, parties may not generally waive their right to seek annulment of the award. According to the BGH, a party cannot generally waive its right to seek annulment before the award is issued.<sup>84</sup> This is because some of the annulment grounds affect public policy and are thus not at the parties' disposal. Yet, pursuant to one view, it is possible for parties to waive their right to invoke individual annulment grounds that solely exist for the waiving party's protection and do not protect public interests (*e.g.*, a party may waive its right to seek annulment for the lack of an arbitration agreement or the wrongful constitution of the tribunal). In general, it can be said that the annulment grounds found in § 1059(2) no. 2 ZPO (*i.e.*, the subject matter is not arbitrable under German law or the recognition or enforcement of the award would violate the *ordre public*) may not be waived.<sup>85</sup> However, the *ordre public* also comprises certain procedural aspects such as the right to be heard.<sup>86</sup> It remains unclear whether the BGH would accept a waiver of the right to seek annulment in respect of such fundamental procedural violations.<sup>87</sup>

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

φ

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

No, there is no *révision au fond* within German arbitration law.<sup>88</sup>

### 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?

In respect of enforcement, German arbitration law differentiates between arbitral awards rendered in Germany and arbitral awards rendered abroad.

<sup>81</sup> § 339 German Criminal Code (StGB).

<sup>82</sup> §§ 331(2), 332(2) StGB.

<sup>83</sup> § 1054(2) ZPO.

<sup>84</sup> BGH SchiedsVZ 2022, 237, 239 para. 15.

<sup>85</sup> Geimer, in: Zöller (ed.), Zivilprozessordnung, 35<sup>th</sup> ed. 2024, § 1059 paras. 79 *et seq.*

<sup>86</sup> BGH SchiedsVZ 2023, 59, 60 para. 14.

<sup>87</sup> See BGH, decision of 02 May 2017, I ZB 1/16, juris, paras. 16, 25 in which the BGH held that the right to be heard is part of the German *ordre public* and thus not at the parties' disposal. The Court did not explicitly address the admissibility of a waiver in respect of the *ordre public*.

<sup>88</sup> Cf. BGH NJW 2002, 3031, 3032; BGH NJW 1999, 2974, 2975.



Awards rendered in Germany need to be declared enforceable.<sup>89</sup> An application for a declaration of enforceability shall be refused and the award set aside if there is a ground for annulment. Yet the court may not consider such grounds for annulment that have already been subject of (unsuccessful) annulment proceedings or that have not been invoked within the time limits by the party opposing the declaration of enforceability.<sup>90</sup>

The recognition and enforcement of foreign arbitral awards is governed by the New York Convention and other treaties on the recognition and enforcement of arbitral awards if they are applicable and provide more favorable terms.<sup>91</sup>

German arbitration law does not provide for any time limits for the recognition and enforcement of awards.

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

While annulment proceedings are pending, German courts are entitled to suspend enforcement under Article VI NYC. They will only do so if the award is likely to be set aside.

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

From a German viewpoint, an award that has been set aside by the courts at the seat of arbitration can no longer be enforced under Article V(1)(e) NYC. Accordingly, if the award is set aside abroad after having been declared enforceable in Germany, the declaration of enforceability may be set aside upon application by a party.<sup>92</sup>

The question of whether German courts are bound by the foreign court's decision to set the award aside is not finally settled.<sup>93</sup> The BGH has recently decided that a foreign court's decision to reject a set-aside application is not binding on German courts seized to declare the award enforceable.<sup>94</sup>

In the past, German courts have followed a relatively liberal approach by not reviewing the merits of a foreign set-aside decision<sup>95</sup> and by not requiring reciprocity for its recognition and enforcement (as required for other foreign court decisions).<sup>96</sup>

## **5.8 Are foreign awards readily enforceable in practice?**

Germany is a member state of the New York Convention. Foreign arbitral awards are enforced unless there are grounds for refusal. The existence of a ground for refusal is not accepted lightly. In particular, the BGH has established a relatively high threshold for violations of public policy according to which not every breach of mandatory German law but only violations that run counter to fundamental value-based decisions of the German legislator infringe public policy.<sup>97</sup> Consequently, arbitral awards are hardly, if ever, set aside for violation of the German *ordre public*.

---

<sup>89</sup> § 1060(1) ZPO.

<sup>90</sup> § 1059(3) ZPO.

<sup>91</sup> § 1061(1) ZPO.

<sup>92</sup> § 1061(4) ZPO.

<sup>93</sup> See BGH SchiedsVZ 2008, 195 which left this question open.

<sup>94</sup> BGH SchiedsVZ 2023, 228, 232 para. 43.

<sup>95</sup> OLG München, SchiedsVZ 2012, 339, 341 which only reviewed the set-aside decision with regard to (i) whether the foreign court was competent for the annulment of the arbitral award, and (ii) whether the annulment was based on one of the grounds provided in the international treaty requiring German courts to enforce (the 1961 Geneva Convention in the case at hand).

<sup>96</sup> BGH, SchiedsVZ 2013, 229, 230.

<sup>97</sup> See, most recently, BGH SchiedsVZ 2022, 237, 239 para. 13; BGH, decision of 6 October 2016, NZG 2017, 227, 233 para. 55 and BGH, decision of 14 January 2016, I ZB 8/15, juris with further references.

As in other EU member states, the German notion of public policy is influenced by EU law, in particular the jurisprudence of the ECJ.<sup>98</sup>

What is more, set-aside applications are limited to one instance in the vast majority of cases thus providing for a relatively speedy process. This is because the application to set an award aside must be made with the Higher Regional Court. The only higher instance, the BGH, may only be seized if the dispute is of fundamental importance or if the development of the law or the consistency of the jurisprudence require a decision by the highest court. In practice, this is the rare exception rather than the rule.

## **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?**

Yes.

### **6.2 If so, what is the practical and/or legal impact of such restrictions?**

German lawyers (*"Rechtsanwälte"*) subject to the Law on the Remuneration of Lawyers (*"RVG"*) may only enter into contingency fee agreements under limited circumstances. A contingency fee may only be agreed upon if the client's economic circumstances would prevent him from asserting his rights in the absence of a success-related fee. Apart from that, German lawyers are barred from funding legal fees of their clients or other third parties.

These restrictions do not apply to foreign lawyers appearing before arbitral tribunals seated in Germany. Third-party funding by a person not subject to the RVG is permissible under German law and increasingly used in state court proceedings.

German arbitration law and jurisprudence are silent on the question of whether contingency fees can be recovered as part of the arbitration costs. Given that (i) German courts can only review a tribunal's cost decision within the setting aside or enforcement proceedings and that (ii) contingency fees are not unheard of in Germany, it is rather un-likely that a court would find a contingency fee (unless egregiously high) to be in breach of German public policy.

## **7. Arbitration and technology**

### **7.1 Is the validity of blockchain-based evidence recognised?**

Yes. Arbitrators are not bound by the technical rules of evidence applying before state courts.

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

This is the case for b2b transaction. Pursuant to § 1031(1) ZPO, the arbitration agreement shall be contained either in a document signed by the parties or in an exchange of letters, telefaxes, telegrams or other means of telecommunication which provide a record of the agreement. The essential requirement is for the arbitration agreement to be recorded. Any form of record of the agreement suffices including blockchain which qualifies as other means of communication.

Pursuant to § 1031 (3) ZPO an arbitration agreement also complies with the formal requirements of § 1031 (1) ZPO if an agreement which complies with the form requirements under § 1031 (1) ZPO makes reference to a document which contains an arbitration clause. The document containing the arbitration clause is not subject to any form requirements; thus, it may be recorded on a blockchain. However, this is not the case for

<sup>98</sup> See, BGH SchiedsVZ 2016, 328, 333 *et seq.* and BGH SchiedsVZ 2023, 166, 172; ECJ, Judgment of 1 June 1999, C-126/97 (*Eco Swiss v Benetton*) stating that a violation of EU competition law amounts to a failure to observe national rules of public policy.

transactions involving a consumer. Pursuant to § 1031(5) ZPO, arbitration agreements to which a consumer is a party must be contained in a document which has been personally signed by the parties. The written form may be substituted by a specific electronic signature, however, generally not by recording on a blockchain.

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

In b2b transactions, a court would consider an arbitration agreement recorded on a blockchain as original.

Pursuant to § 1054(1) ZPO, the award shall be made in writing and be signed by the arbitrator(s). Considering this formal requirement, a court would not consider an award recorded on a blockchain as original even though it serves the purpose of documenting the termination of the arbitral procedure and the authenticity of the arbitral award.

### **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?**

It is disputed whether an electronically signed or digitally signed award is to be considered as an original for the purposes of recognition and enforcement under German law. Pursuant to the still prevailing view, neither form of an electronic signature meets the requirement of a signature made in writing pursuant § 1054 (1) ZPO. By contrast, some authors argue that an electronic signature using encrypted electronic keys authenticated by a third-party certificate which qualifies as qualified electronic signature pursuant to Article 25 (2) of the EU Regulation 910/2014, as it is the case for decisions by state courts, should be considered as complying with the form requirements of § 1054 (1) ZPO. However, a court would not consider an award that has been electronically signed by inserting the image of a signature or by using encrypted electronic keys authenticated by a third-party certificate as an original for the purposes of recognition and enforcement if the award has been rendered in Germany and therefore, the form requirement of § 1054 (1) ZPO applies.

If the award has been rendered in a country other than Germany, § 1054 ZPO does not apply. Pursuant to § 1061 (1) ZPO, the recognition and enforcement of foreign arbitral awards is governed by the New York Convention and other treaties on the recognition and enforcement of arbitral awards if they provide more favorable terms. The recognition of a foreign award that has been signed electronically is subject to the requirements of Art. IV NYC or national laws that provide more favorable terms, Art. IV NYC requires the submission of the duly authenticated original award or a duly certified copy thereof but makes no specific requirements regarding the form of the signature of an arbitral award. However, it should be noted that despite § 1061 (1) ZPO some German courts require foreign arbitral awards to meet the formal requirement of a signature made in writing pursuant to 1054 (1) ZPO. Therefore, it is advisable to ensure that the award is signed in writing and not electronically if the award is to be enforced in Germany.

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

The Federal Ministry of Justice and Consumer Protection installed a task force to examine the need for reforms of the German arbitration law. In October 2024, the German Government presented a "*Draft Bill for the Modernisation of Arbitration Law*"<sup>99</sup> proposing several amendments to the arbitration law contained in the ZPO. The draft aims at strengthening Germany's role as a venue for arbitration proceedings. As of April 2025, the draft has not been adopted by Parliament. Against the backdrop of the German federal elections in February 2025, it is unclear at the time of writing whether and to what extent the current draft law will be adopted by the new parliament.

<sup>99</sup> Draft law (BT-Drucksache 20/13257) available at [Deutscher Bundestag Drucksache 20/13257 Gesetzentwurf der Bundesregierung Entwurf eines Gesetzes zur Modernisierung des Schiedsverfahrensrechts](#)

The suggested amendments include the following ones:

- Abolishing the existing form requirements for arbitration agreements in b2b transactions;
- Introducing default rules on the appointment of arbitrators in multi-party proceedings;
- Permitting an early judicial review of arbitral decisions denying jurisdiction;
- Allowing arbitral tribunals to hold oral hearings by video conference;
- Allowing the publication of arbitral awards with the consent of the parties;
- Permitting parties to file arbitral awards and key documents in English without German translation in annulment and enforcement proceedings before the German courts;
- Allowing the German States to extend the jurisdiction of Commercial Courts to review applications for the enforcement or set-aside of arbitral awards;
- Introducing a new remedy for the extraordinary annulment of arbitral awards after the conclusion of set-aside proceedings in extremely limited circumstances (e.g., if the award was obtained by committing a criminal offence);
- Permitting the enforcement of interim orders issued by arbitral tribunals seated outside Germany;
- Limiting the power of German courts to make *ex parte* orders on the provisional enforcement of awards to urgent cases.

## 9. Compatibility of the Delos Rules with local arbitration law

The Delos Rules are compatible with the German arbitration law with the following observations:

### 1. Waiver, Art. 15 Delos Rules:

Article 15 of the Delos Rules is compatible with German arbitration law subject to the restrictions in § 1027 ZPO, which provides that insofar as a non-mandatory statutory or contractual provision in respect of the arbitration proceedings has not been met, a party having failed to object to this irregularity without undue delay may not assert this objection later unless the party was not aware of the irregularity.

### 2. Limitation of Liability, Article 17.1 Delos Rules

The parties and the arbitrators can contractually limit the liability of the arbitrators and the institution. However, liability for intent cannot be excluded in advance. Therefore, the limitation in Art. 17.1 Delos Rules cannot limit the liability for intentional behavior but is to be considered as limitation of liability for (gross) negligence.

Furthermore, under German law institutional rules like the Delos Rules are regarded as general terms and conditions. As such, the limitation of liability in Art. 17.1 Delos would be regarded invalid in agreements related to b2c transactions. By contrast, pursuant to the majority view, this restriction does not apply in b2b transactions.

## 10. Further reading

Balthasar in: Balthasar, *International Commercial Arbitration*, Part. 3, Section J, 2<sup>nd</sup> ed., Beck Hart Nomos, 2021; Böckstiegel/Kröll/Nacimiento (eds), *Arbitration in Germany – The Model Law in Practice*, 2nd ed., Wolters Kluwer Law & Business 2015; Boog/Wimalasena, *The 2018 DIS Rules: New Rules for a Renewed Institution*, (2018) 36 *ASA Bull.* 10–30; Hanefeld/Schmidt-Ahrends in: Weigand/Baumann (eds), *Practitioner's Handbook on International Arbitration*, 3rd ed., Oxford University Press 2019 ; Kröll, *National Report for Germany (2007 through 2018)*, in: Bosman (ed.), *ICCA International Handbook on Commercial Arbitration*, Supplement No. 98, ICCA & Kluwer Law International, March 2018; Solomon, *Interpretation and Application of the New York Convention in Germany*, in: Bermann (ed.), *Recognition and Enforcement of Foreign Arbitral Awards*, Springer 2017; Weinacht, *Enforcement of Annulled Foreign Arbitral Awards in Germany*, (2002) *J. Int'l Arb.* 313–336.

## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, i.e. with offices and a case team?	<p>The leading national and international arbitral institution is the <i>Deutsche Institution für Schiedsgerichtsbarkeit</i> (German Institute of Arbitration) DIS with main offices in Bonn and Berlin.</p> <p>The different regional <i>Industrie- und Handelskammern</i> (Chambers of Industry and Commerce) IHK provide arbitration services in cooperation with the DIS. The German Chamber of Industry and Commerce (DIHK) has recently established its own arbitration court.</p> <p>The association of notaries public entertains the <i>Schlichtungs- und Schiedsgerichtshofs Deutscher Notare</i> (Mediation and Arbitration Court of German Notaries Public) SGH</p> <p>Various sector-specific institutions entertained by the respective business associations exist.</p> <p>A private initiative is the Court of Innovative Arbitration (COIA).</p>
Main arbitration hearing facilities for in-person hearings?	The DIS and the IHK have their own hearing facilities and provide support in finding hearing facilities.
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	There is offering of reprographics facilities in reasonable proximity to the above main arbitration providers.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	There is a broad offering of local providers of court reporting services.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	There is a broad variety of local interpreters in all major cities.
Other leading arbitral bodies with offices in the jurisdiction?	ϕ