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NOTE

General Editor

The authors of the National Report Austria, Niamh Leinwather, Elisabeth Vanas-Metzler and Sophie Tesarik, confirm that the National Report as published in Handbook Supplement 131 of March 2024 ***reflects arbitral practice*** in Austria.

The status of the legislation annexed is as follows:

- **Annex I**: Austrian Arbitration Act (in effect 1 July 2006), (as amended by *SchiedsRÄG* 2013) (published in Supplement 131 of March 2024) ***is in effect***;
- **Annex II**: Law on Mediation in Civil Matters (in effect 1 May 2004), as amended (published in Supplement 127 of July 2023) ***remains in effect***; and
- **Annex III**: Enforcement Act (*Exekutionsordnung*) [Arts. 1(16) and 406-416] (published in Supplement 131 of March 2024) ***is in effect***.

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*Niamh Leinwather, Elisabeth Vanas-Metzler and Sophie Tesarik**

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ANNEX I: Austrian Arbitration Act (in effect 1 July 2006), (as amended by *SchiedsRÄG* 2013)
ANNEX II: Law on Mediation in Civil Matters (*Zivilrechts-Mediations-Gesetz*) (in effect 1 May 2004)
ANNEX III: Enforcement Act (*Exekutionsordnung*) (Arts. 1(16) and 406-416)

Chapter I. Introduction[1]

1. LAW ON ARBITRATION

The first general statutory regulation of arbitration in Austria was contained in Chapter Four of the Austrian Code of Civil Procedure (*Zivilprozessordnung*, "ACCP") of 1 August 1895 (RGBl. No. 113), entitled "Arbitral Procedure", comprising Sects. 577-599 ACCP.[2] These provisions were very modern for their time. They gave arbitral tribunals practically the same status as civil courts, and arbitral awards were treated as civil court judgments. Therefore, no *exequatur* proceedings for arbitral awards were necessary. These provisions were updated by the Federal Law of 2 February 1983, concerning provisions on civil procedure (BGBl. No. 135/1983) in force as of 1 May 1983. For Austria, as a

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* This National Report is based on and constitutes an update to the text by the deceased DDr. Werner Melis, International Arbitrator, Honorary President of the Vienna International Arbitral Centre of the Austrian Federal Economic Chamber and Honorary Vice-President of ICCA, who passed away on 21 September 2022. Niamh Leinwather is an experienced arbitration lawyer and since January 2022 VIAC's Secretary General. Elisabeth Vanas-Metzler is an experienced arbitration lawyer and was VIAC's Deputy Secretary General from 2018 to 2022. Sophie Tesarik is Legal Counsel at VIAC, working predominantly as a case manager for arbitration proceedings.

1. The following abbreviations are used in this National Report:
   ABGB: Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*)
   BGBl: Federal Official Gazette (*Bundesgesetzblatt*)
   ACCP: Code of Civil Procedure (*Zivilprozessordnung*)
   RGBl: Imperial Gazette (*Reichsgesetzblatt*)
   UGB: Commercial Code (*Unternehmensgesetzbuch*)
   VIAC: Vienna International Arbitral Centre
2. To the extent the terms used in the VIAC Rules of Arbitration ("Vienna Rules") refer to natural persons, the form chosen shall apply to all genders (Art. 6(2) Vienna Rules); this applies equally to the provisions of the ACCP cited herein.

neutral country and a venue for East–West arbitrations, it was necessary to modernize the provisions. As in the preceding regulation, no distinction was made between domestic and international arbitration.

The 1985 UNCITRAL Model Law on International Commercial Arbitration (the "UNCITRAL Model Law"), adopted by the United Nations Commission on International Trade Law (UNCITRAL), and later amended in 2006, ultimately became the reference standard for international commercial arbitration worldwide. Thus it was necessary to review the Austrian arbitration statute and align it with the provisions of the UNCITRAL Model Law, at least, in part to maintain the position of Austria as a venue for international arbitrations. The working group on the reform of the Austrian Arbitration Law was embedded in the framework of a research institute[3] and completed its work in 2002. The proposals of this working group[4] along with comments from the Austrian Bar and an authoritative thesis[5] served as a basis for the draft of a new Austrian Arbitration Law 2005.[6] In 2006, the new Austrian Arbitration Law (*Schiedsrechts-Änderungsgesetz* 2006 – *SchiedsRÄG* 2006) regulating both domestic and international arbitration was adopted by the Austrian Parliament (BGBl. I 2006/7) and came into effect on 1 July 2006. Austria had, thus, joined the UNCITRAL Model Law countries.

The Arbitration Law Amending Act 2013 (*Schiedsrechts-Änderungsgesetz* 2013 – *SchiedsRÄG* 2013), in effect on 1 January 2014, amended Sects. 615-618 ACCP. According to the 2014 amendments, actions for setting aside an arbitral award, actions for the declaration of existence or non-existence of an arbitral award, as well as requests regarding the constitution of the Arbitral Tribunal (substitute appointments, challenge, early termination) are exclusively decided by the Austrian Supreme Court as the first and final instance.

Chapter Four of the ACCP (in effect 1 July 2006), containing Sects. 577-618, as amended by the Arbitration Law Amending Act (*Schiedsrechts-Änderungsgesetz*) 2013 (the "Arbitration Law"), is attached as **Annex I** to this National Report.

In 2003 the Austrian Law on Mediation in Civil Matters (*Zivilrechts-Mediations-Gesetz*) was adopted and it entered into force on 1 May 2004 (see Chapter VIII – Conciliation/Mediation below and **Annex II** hereto).

3. Ludwig Boltzmann Institut für Rechtsvorsorge und Urkundenwesen.
4. "*Entwurf eines neuen Schiedsverfahrensrechts mit Erläuterungen von Paul Oberhammer*", in Walter H. Rechberger, ed., *Veröffentlichungen des Ludwig Boltzmann-Instituts für Rechtsvorsorge und Urkundenwesen*, Vol. XXVII (MANZ'sche Verlags- und Universitätsbuchhandlung, Vienna 2002).
5. Dr. Alexander V. Saucken, *Die Reform des österreichischen Schiedsverfahrensrechts auf der Basis des UNCITRAL Modellgesetzses über die Internationale Handelsschiedsgerichtsbarkeit* (2004).
6. Bundesministerium für Justiz, *Entwurf eines Schiedsrechts-Änderungsgesetzes 2005, Texterläuterungen*.

2. PRACTICE OF ARBITRATION

a. Domestic arbitration

There are no statistics available on the use of domestic arbitration in Austria. Austrian courts have rendered several decisions concerning domestic arbitration in the last years. Further, it is known that arbitration is used as a means for the settlement of domestic disputes from the practice of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber (AFEC). Since 2018, VIAC has been permitted to administer not only international but also domestic arbitrations. In terms of numbers, it seems, however, that the majority of domestic commercial disputes are decided by the courts. Austria has specialized commercial courts that apparently meet the expectations of the users, as only a small percentage of first instance decisions are appealed; the majority of decisions of the commercial courts of first instance are rendered within one year and the court fees are comparatively low for smaller and medium-sized disputes. Nevertheless, depending on the specifics of a case, parties may also – and already do – see an incentive to refer to arbitration for domestic commercial disputes.

b. International arbitration

International commercial arbitration has played a role in Austria since the early 1970s, and since 1975 principally under the auspices of VIAC, within the framework of the Chamber of Commerce system.

c. Arbitral institutes

In the early 1970s, Austria, as a neutral country alongside Switzerland and Sweden, grew in popularity as a venue for East-West commercial arbitrations. For this reason, the AFEC, which is the umbrella organization of the nine Regional Economic Chambers, established VIAC in 1975. Consequently, in the first years of operation, the bulk of cases concerned East-West cases, i.e., that one party had its place of business in a CMEA[7] country, while the other party came from a western country. Since the fall of the iron curtain, VIAC also administers international cases outside of these regions although the focus remains on Central and Eastern Europe (CEE) and Southeast Europe (SEE). For example, in the year 2022, 42 percent of parties were from the CEE / SEE region. In 2018, VIAC obtained permission to administer not only international but also domestic arbitrations; the jurisdiction for all arbitration matters within the Economic Chamber's structure was bundled at VIAC. By September 2023 approximately seventy arbitration cases were pending before VIAC with a total amount in dispute of nearly two billion Euros.

On 1 July 2021, new stand-alone VIAC Rules of Investment Arbitration and Mediation came into force. At the same time, the VIAC Rules of Arbitration and

7. Council for Mutual Economic Assistance (Warsaw Pact).

Mediation ("Vienna Rules" and "Vienna Mediation Rules") were amended in order to address a number of recent developments in international practice, e.g., third-party funding, remote hearings, etc.[8] The present Vienna Rules are available via the VIAC website in the official versions in German and English, as well as in various other languages.[9]

The new Vienna Rules 2021 have not changed the general characteristics that were already incorporated in their first version of 1975, which includes the following:

(1) The parties are free to agree to have the dispute decided by a sole arbitrator or by three arbitrators. If no agreement can be reached, the Board of VIAC will decide whether the case will be settled by one or by three arbitrators. The Board of VIAC makes only default appointments of arbitrators. The parties are free to agree upon the nationality of arbitrators, specific qualifications of the arbitrators, any place of arbitration, any substantive law and any language or languages for the arbitration. The parties are also free to represent themselves or to be represented by any person or law firm of their choice.
(2) Once an arbitral tribunal has been constituted and the requested deposit for the costs of arbitration has been paid, the file is handed over to the arbitrator(s), who enjoy broad discretion in tailoring the proceedings to the particular requirements of the respective case.
(3) As in the past, there is no formal scrutiny of awards. However, in practice, VIAC's Secretariat reads each award and proposes non-binding amendments to the arbitral tribunal. This is not explicitly foreseen in the Rules, rather it is an additional service offered by the Secretariat. Awards are served on the parties by the Secretary General, whose signature confirms that the award was made under the Vienna Rules and by the arbitrator(s) appointed in accordance with its Rules.
(4) VIAC's administrative fees and the fees for arbitrators are calculated according to a schedule of costs based on the amount in dispute. Value added tax ("VAT"), if payable by an arbitrator, is considered part of the arbitration costs (see Chapter V.8 – Fees and Costs below).
(5) UNCITRAL has been notified that the Board of VIAC or its President is prepared to act as appointing authority under the UNCITRAL Arbitration Rules, and they have been called upon to do so on a number of occasions. In addition, UNCITRAL has also been notified that VIAC is prepared to render administrative services in connection with arbitrations under the UNCITRAL Arbitration Rules. Annexes 4 and 5 to the Vienna Rules outline the services VIAC offers as appointing or administering authority.

8. Unless otherwise expressed, all references to the Vienna Rules relate to the 2021 version of these Rules. The respective articles in the Vienna Rules will be referenced in this Report where considered particularly relevant.
9. See <https://www.viac.eu/en/arbitration/rules-of-arbitration-and-mediation>.

The contact details of VIAC are as follows:

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c. Published awards

The Board and the Secretary General may publish anonymized summaries or extracts of awards in legal journals or VIAC's own publications, unless a party

has objected to publication within thirty days upon receipt of the award (Art. 41 Vienna Rules). In 2015 VIAC published the book *Selected Arbitral Awards, Volume I* which contains anonymized summaries of awards that have been rendered under its Rules. The book focuses on procedural issues identified and commented on by experts. In 2023 VIAC released a second set of selected awards (*Selected Arbitral Awards, Volume II*) through a special edition of the ITA Arbitration Report and the Kluwer Arbitration database. Beyond these publications, arbitral awards may potentially be published by parties subject to the applicable confidentiality agreements or in the course of annulment or enforcement proceedings before state courts.

Chapter II. Arbitration Agreement

1. FORM AND CONTENTS OF THE AGREEMENT

a. Arbitration clause and submission agreement

The Arbitration Law (see **Annex I** hereto) closely follows the language of Art. 7(1) of the UNCITRAL Model Law[11] regarding the definition of an arbitration agreement. The parties may, therefore, agree "to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not". This agreement may be a separate agreement or a clause within a contract (Sect. 581(1) ACCP).[12] The provisions of this Law apply also to arbitral tribunals that are, in a manner permitted by the law, mandated by testamentary disposition or other legal transactions that are not based on agreements by the parties or through articles of association or incorporation (Sect. 581(2)).

b. Form requirements

The provisions concerning the form of an arbitration agreement are based on Art. 7(2) of the UNCITRAL Model Law. An arbitration agreement must, therefore, be contained either in a document signed by the parties or in letters, telefaxes, e-mails or other forms of communication exchanged between the parties which provide a record of the agreement (Sect. 583(1)). It follows from this that there are types of arbitration agreements that do not need to be signed by the parties and that an electronic signature is not required for e-mails.

The provision covers all the types of arbitration agreements that typically form the legal basis upon which cases are submitted to VIAC. The Arbitration Law expressly provides that a reference to a document that contains an

11. Unless otherwise expressed, all references to the UNCITRAL Model Law relate to the 1985 version.
12. Unless otherwise expressed, all references to sections without further indication relate to the current version of the Austrian Arbitration Law (ACCP Sects. 577-816).

arbitration agreement constitutes an arbitration agreement, if the reference is such that it makes said arbitration agreement part of the contract and if the form requirements for arbitration agreements are met (Sect. 583(2)). In addition, defects of form of the arbitration agreement are resolved if they have not been raised at the latest together with the defence plea (*Einlassung in die Sache*) on the merits of the claimant's claim (Sect. 583(3)).

According to Art. 1008 of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, "ABGB"), a special power of attorney in writing is necessary for the conclusion of an arbitration agreement. According to the Austrian Commercial Code ("UGB"), specifically Art. 54 UGB, any authorization given orally or in writing by an entrepreneur that is subject to the UGB, also includes the right to conclude arbitration agreements. Article 1008 ABGB is, therefore, not applicable in commercial arbitration, whether domestic or international.

The Arbitration Law contains special provisions for arbitration agreements between entrepreneurs and consumers. Such agreements can only be validly concluded for already existing disputes (Sect. 617(1)). In addition, the arbitration agreement must be a separate agreement personally signed by the consumer and must not contain any other agreements (Sect. 617(2)); the consumer must, prior to the conclusion of the arbitration agreement, receive written legal advice on the significant differences between arbitral proceedings and proceedings before state courts (Sect. 617(3)); and the place of arbitration must be stipulated in such arbitration agreement (Sect. 617(4)). If the agreed place of arbitration is in a state where the consumer was not domiciled, such as the usual place of residence or place of employment at the time of the conclusion of the arbitration agreement or when the claim was filed, the arbitration agreement is only relevant if the consumer relies on it (Sect. 617(5)). These provisions apply accordingly to arbitral proceedings in labour law cases (Sect. 618).[13]

c. Model arbitration clause

In practice, the types of arbitration clauses concluded by parties in Austria vary. The minimum arbitration clause for an *ad hoc* arbitration would simply be a provision stating that disputes arising out of a contract between the parties or an existing dispute should be settled by arbitration in Austria in one of the forms admitted by the law. If the parties opt for institutional arbitration, they will usually avail of the model clauses provided by the respective institutes.

13. The provisions of Sect. 617(6) and (7) ACCP concerning the setting aside of awards rendered in arbitral proceedings including a consumer and in labour law cases (Sect. 618) are dealt with in Chapter VI.1.

VIAC recommends the following standard arbitration clause:

> "*All disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules*.
>
> Parties may wish to stipulate the following in the arbitration clause:
>
> (1) the number of arbitrators (one or three) (Article 17 Vienna Rules);
> (2) the language(s) to be used in the arbitral proceedings (Article 26 Vienna Rules);
> (3) the substantive law applicable to the contractual relationship, the substantive law applicable to the arbitration agreement (Article 27 Vienna Rules), and the rules applicable to the proceedings (Article 28 Vienna Rules);
> (4) the applicability of the provisions on expedited proceedings (Article 45 Vienna Rules);
> (5) the scope of the arbitrators' confidentiality (Article 16 paragraph 2 Vienna Rules) and its extension regarding parties, representatives and experts;
> (6) If the parties wish to conduct Arb-Med-Arb proceedings, the following addition to the model arbitration clause should be included:
>
> *Furthermore, the parties agree to jointly consider, after due initiation of the arbitration, to conduct proceedings in accordance with the Mediation Rules of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber (Vienna Mediation Rules). Settlements that are generated in such proceedings shall be referred to the arbitral tribunal appointed in the arbitration. The arbitral tribunal may render an award on agreed terms reflecting the content of the settlement (Article 37 paragraph 1 Vienna Rules)*."

In addition, VIAC recommends certain other model clauses, namely: Mediation Clauses, Model Clause for VIAC as Appointing Authority and the Model Clause for VIAC as Administering Authority, and the Model Clause for Disputes Relating to Succession (Annex 1 to the Vienna Rules).

2. PARTIES TO THE AGREEMENT

a. Capacity

There are no restrictions in the law as to persons, physical or legal, who may resort to arbitration with the exceptions mentioned for consumers (Sect. 617 ACCP) and for labour cases (Sect. 618).

b. Bankruptcy

In theory, arbitral proceedings are possible in case of bankruptcy of one of the parties. Several questions arise in this context, including whether the insolvency proceedings are recognized in the arbitration, which law applies to the effect of the insolvency on the arbitration and what such effects are, as well as who will participate in the arbitration (insolvent party / insolvency administrator). Under Austrian insolvency law, pending arbitral proceedings will be stayed when insolvency proceedings are initiated;[14] the receiver appointed by the court will represent the bankrupt party.

c. State or state agencies

There is no provision in the law or in the Vienna Rules prohibiting the state or state agencies to resort to arbitration. In fact, the Austrian State and state agencies have in the past resorted to arbitration in domestic and in international cases. Moreover, the Vienna Investment Arbitration Rules 2021 are intended to apply to the arbitration of investment disputes involving a state, a state-controlled entity or an intergovernmental organization.

d. Multiparty arbitration

In practice, there are often arbitration cases with multiple parties. Article 18 of the Vienna Rules contains special provisions for the constitution of the arbitral tribunal in multiparty proceedings.

Joinder of third parties and consolidation of proceedings are possible (Arts. 14 and 15 Vienna Rules).

According to Sect. 587(5), concerning the appointment of arbitrators in multiparty scenarios, several claimants or respondents are treated as one entity. If such claimants or respondents have not agreed upon the appointment within four weeks of receipt of a respective notification, the arbitrator or the arbitrators shall be appointed by the court upon application of the other party, on the condition that the agreed appointment procedure does not provide otherwise. The stricter approach developed by the French *Cour de cassation* in the so-called *Dutco* case,[15] where in such a case the claimant loses its right to appoint an arbitrator and all arbitrators are appointed by a competent court or by an agreed arbitral institute, has not been followed.

3. DOMAIN OF ARBITRATION

a. Arbitrability

Under the Arbitration Law, the domain of arbitration is very broad. Any pecuniary claim that lies within the jurisdiction of the courts of law as well as

14. OGH 18 ONc 6/14y; 18 ONc 7/14w; 18 ONc 1/15i.
15. *Cour de cassation*, 7 January 1992.

non-pecuniary claims in matters, in which the parties are entitled to conclude a settlement on the subject matter in dispute are arbitrable and can be subject to an arbitration agreement (Sect. 582(1) ACCP). Expressly excluded from arbitration are claims involving family law, as well as all claims based on contracts (even only partly) subject to the Austrian Landlord and Tenant Act (*Mietrechtsgesetz*) or to the Austrian Non-profit Housing Act (*Wohnungsgemeinnützigkeitsgesetz*) and all claims resulting from or in connection with apartment ownership (*Wohnungseigentum*). As in Art. 1(5) of the UNCITRAL Model Law, there is an additional provision that statutory provisions, which are not dealt with in this Chapter, according to which disputes may not or may only under certain circumstances be made subject to arbitral proceedings, shall not be affected (Sect. 582(2)).

b. Filling gaps and adapting contracts

There is no specific provision in the Arbitration Law or in the Vienna Rules regarding this particular issue. Relevantly, according to Sect. 603(1) ACCP, the arbitral tribunal shall decide a dispute in accordance with such statutory provisions or rules of law as agreed upon by the parties. Thus, generally speaking, if the agreed substantive law or the agreed rules of law allow the parties to fill gaps in a contract, or to adapt a contract to fundamentally changed circumstances, or if the parties expressly authorize the arbitrators to take such decisions, they may do so.

4. SEPARABILITY OF ARBITRATION CLAUSE

While the Arbitration Law recognizes the doctrine of *Kompetenz-Kompetenz* (see Chapter V.4 below), the additional provisions of Art. 16(1) of the UNCITRAL Model Law containing the so-called "separability doctrine" have not been included in the present Law. Austrian courts have in the past consistently taken the position that defects in the main contract do not automatically imply defectiveness of an arbitration clause contained in such contract. There was, therefore, no particular need to adopt these provisions of the UNCITRAL Model Law.

5. EFFECT OF THE AGREEMENT (SEE ALSO CHAPTER V.4 – JURISDICTION)

a. Duty of court

If a party brings an action before a court in a matter that is subject to an arbitration agreement, the court shall dismiss the claim unless the respondent submits a pleading in the matter or orally pleads before the court without invoking the arbitration agreement. The court will not dismiss the claim if it establishes that the arbitration agreement does not exist or is incapable of being

performed.[16] If such court proceedings are still pending, arbitral proceedings may nevertheless be commenced or continued and an award rendered (Sect. 584(1) ACCP). These provisions comply in substance with Art. 8(2) of the UNCITRAL Model Law.

However, the Arbitration Law goes even further. If an arbitral tribunal has denied its jurisdiction because no arbitration agreement exists or the arbitration agreement is incapable of being performed, a court may not dismiss an action on this subject matter on the grounds that an arbitral tribunal has jurisdiction over the case. The right of the claimant to bring an action according to Sect. 611 for setting aside the decision by which the arbitral tribunal denied its jurisdiction, ceases when it brings an action in court (Sect. 584(2)). If arbitral proceedings are pending, no further motions concerning the asserted claim are admissible before another court or arbitral tribunal. A request based on identical issues shall be rejected unless the lack of jurisdiction of the arbitral tribunal has been raised before the arbitral tribunal (at the latest together with a plea to the merits of the claim) and a decision by the arbitral tribunal in this respect cannot be obtained within a reasonable time (Sect. 584(3)).

In the past, an action before a court or arbitral tribunal not having jurisdiction did not interrupt the running of the period of limitation, which can potentially cause problems. The present Arbitration Law thus provides that in cases where a court or arbitral tribunal has denied its jurisdiction over the subject matter, the proceeding shall be deemed to be properly continued if an action is immediately brought to the competent court of law or arbitral tribunal (Sect. 584(4)). Section 584(5) contains another pro-arbitration provision, namely that the party which has at an earlier stage in a proceeding, relied on the existence of an arbitration agreement cannot later claim that this agreement does not exist, unless there has been an essential change in circumstances in the meantime.

b. Kompetenz-Kompetenz

Regarding the competence of arbitrators, the Arbitration Law copied the first part of the first sentence of Art. 16(1) of the UNCITRAL Model Law. According to Sect. 592(1), the arbitral tribunal shall rule on its own jurisdiction ("*Kompetenz-Kompetenz*"). Thus the arbitral tribunal has to decide, whether an arbitration clause meets the form requirements for an arbitration agreement according to Sect. 583(1). It follows that an arbitral tribunal can decide that an arbitration agreement in a contract is invalid and that consequently it lacks jurisdiction to decide claims arising out of this contract, even if it considers that the contract is valid.

The obligation of the arbitral tribunal to decide on its jurisdiction also covers cases where a party alleges that the main contract which contains the arbitration clause is invalid or non-existent. The arbitral tribunal has to decide on its

16. Therefore, a separate declaratory action that an arbitration agreement does not exist or is incapable of being performed is no longer necessary.

jurisdiction by an arbitral award, either by a separate award, or in the award on the merits (Sect. 592(1)) (see Chapter V.4 below).

Chapter III. Arbitrators

1. QUALIFICATIONS

a. Requirements

Austrian law does not require any particular qualifications for arbitrators. Any person – Austrian or non-Austrian – can be appointed as an arbitrator. The parties are, however, free to agree on specific qualifications requested of arbitrators within the framework of their arbitration agreement. Such qualifications may be, and sometimes are in practice, specific professional qualifications (attorney-at-law; university professor; technician, etc.), nationality (for instance, that a sole arbitrator or the chairperson of an arbitral tribunal shall be of a nationality different from the nationality of the parties), knowledge of a specific language, etc. This liberal approach is also reflected in the VIAC Rules of Arbitration ("Vienna Rules"), which provide that

> "The parties shall be free to designate the persons they wish to nominate as arbitrators. Any person with full legal capacity may act as arbitrator, provided the parties have not agreed upon any particular additional qualification requirements. The arbitrators have a contractual relationship with the parties and shall render their services to the parties." (Art. 16(1) Vienna Rules).

b. Restrictions

Pursuant to Art. 63(5) of the Act on Professional Rights and Duties of Judicial Officers,[17] judges may not accept an appointment as arbitrators during their tenure of judicial office. A judicial officer who acts as an arbitrator commits a disciplinary offence. However, this does not constitute a ground for setting aside an award rendered in arbitral proceedings where he or she has acted as arbitrator.

c. Disclosure

According to Austrian law, arbitral proceedings are considered equal to civil proceedings before the courts. For this reason, an arbitral award has the same value as a judgment of a state court. Unlike many other jurisdictions, no *exequatur* proceedings are necessary. It follows that arbitrators have to be impartial and independent in the same way as state court judges. State court judges are excluded by law from acting in civil cases due to an assumption of impartially if certain potential conflicts exist.[18] However, in the same situations

17. *Richter- und Staatsanwaltschaftsdienstgesetz*; BGBl. I Nr. 210/2013.
18. *§ 20 Gesetz vom 1. August 1895, über die Ausübung der Gerichtsbarkeit und die Zuständigkeit der ordentlichen Gerichte in bürgerlichen Rechtssachen*; BGBl. I Nr. 59/2017.

a person may act as arbitrator, provided that these facts are disclosed to all parties and all parties expressly agree. Failing such agreement, an arbitrator who refuses to resign from his position as arbitrator may be challenged.

Section 588(1) ACCP (see **Annex I** hereto) follows Art. 12(1) of the UNCITRAL Model Law, namely that a person who is approached in connection with a possible appointment as an arbitrator

> "shall disclose any circumstances likely to give rise to doubts as to his impartiality or independence, or which are in conflict with the agreement of the parties. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties, unless they have already been informed of them by him."

This provision, which also reflects past practice, has been copied in the Vienna Rules (Art. 16(4)). The 2021 revision of the Vienna Rules for the first time took into account the concept of third-party funders, which is another element to be considered with regard to the independence and impartiality of the arbitrators (Arts. 6 and 13a Vienna Rules).

The arbitrators' duty of disclosure was confirmed in a 2006 decision of the Austrian Supreme Court, holding that it is the duty of arbitrators to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. If arbitrators fail to do so and if they are successfully challenged as a result of this, they also lose any right to compensation for services rendered prior to the termination of their office as an arbitrator.[19]

2. APPOINTMENT OF ARBITRATORS

The provisions on the appointment of arbitrators in the Arbitration Law closely follow the provisions of Art. 11(2)-(5) of the UNCITRAL Model Law. Thus, the parties are free to agree on a procedure for the appointment of an arbitrator or arbitrators (Sect. 587(1) ACCP). Failing such agreement, a sole arbitrator or arbitrators are appointed upon request of a party by the Austrian Supreme Court as specified in Sect. 615. If the parties cannot agree upon a sole arbitrator, or a party fails to appoint its arbitrator(s) within four weeks of receipt of the request to do so from the other party, or if the parties do not receive the notification regarding the third arbitrator to be appointed by the party-appointed arbitrators within four weeks of their appointment (Sect. 587(2) numbers 1-4), such arbitrator shall be appointed by the court. A party is bound by its appointment of an arbitrator as soon as the other party has received the written notice of the appointment (Sect. 587(2) number 5). A party may also request the Austrian Supreme Court to appoint the arbitrator when the parties have agreed on an

19. OGH 6 Ob 207/06v.

appointment procedure and the parties fail to act according to this procedure, or they or the arbitrators are unable to reach an agreement according to this procedure, or a third party fails to perform any function entrusted to it under such procedure within three months of receipt of a respective written notification (Sect. 587(3) numbers 1-3). The latter is in practice the case when an agreed appointing authority refuses to act or fails to act upon request of a party.

There are no statistics available about default appointments of arbitrators by the court, although it is known that such default appointments are actually made. Under the Vienna Rules, the Board of VIAC makes default appointments for parties who cannot agree upon a sole arbitrator, for parties who fail to appoint an arbitrator, for a tribunal composed of three arbitrators and for party-appointed arbitrators who are unable to agree upon a third arbitrator (Art. 17(3)-(5) Vienna Rules).

3. NUMBER OF ARBITRATORS (SEE ALSO CHAPTER V.2 – MAKING OF THE AWARD)

As in Art. 10 of the UNCITRAL Model Law, the Austrian Arbitration Law provides that the parties are free to determine the number of arbitrators and that, failing such agreement, three arbitrators are to be appointed (Sect. 586 ACCP). This provision complies with general practice in Austria in the past. If the parties have determined an even number of arbitrators, the arbitrators "shall appoint a further person as chairman" (Sect. 586(1)). Arbitral tribunals composed of an even number of arbitrators are, therefore, not allowed. The reason for this mandatory provision is to avoid problems in cases where an even number of arbitrators are unable to reach a majority decision.

While under the Arbitration Law in *ad hoc* arbitrations the number of arbitrators will be three unless the parties agree otherwise, under the Vienna Rules, the Board of VIAC decides upon the number of arbitrators (one or three) "if the parties fail to decide". In that context, the Board shall take into consideration in particular the complexity of the case, the amount in dispute, and the parties' interest in an expeditious and cost-efficient decision (Art. 17(2) Vienna Rules).

4. CHALLENGE TO ARBITRATORS

a. Grounds

The Austrian Arbitration Law has copied the provisions of Art. 12(2) of the UNCITRAL Model Law, and provides in Sect. 588(2) ACCP that:

> "[a]n arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess the qualifications agreed upon by the parties. A party may challenge

> an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made, or after its participation in the appointment."

b. Procedure

According to the Austrian Arbitration Law, the parties are free to agree on a procedure for challenging an arbitrator (Sect. 589(1)). According to the Vienna Rules, the decision on a challenge under these Rules is taken by the Board of VIAC. The provisions of Sect. 588(2) have been copied in the Vienna Rules (Art. 20(1) Vienna Rules). If the challenged arbitrator does not resign, the Board shall decide upon the challenge on the basis of the particulars in the challenging motion and the evidence attached thereto. The Board decides only after having received the comments of the challenged arbitrator and the other parties. The Board can also request comments from other persons (Art. 20(3) Vienna Rules).

There are no general statistics about challenge procedures. It can be said, however, that challenges do occur, also under the Vienna Rules. In an effort to make the challenge process at VIAC more transparent, members of the VIAC Secretariat have published anonymized summaries of challenge decisions in two legal papers.[20]

In addition, the Board of VIAC and the President of the Austrian Federal Economic Chamber (AFEC) have been appointed several times in the past as appointing authorities under the UNCITRAL Arbitration Rules and other arbitration rules and they have also been seized with applications for the challenge of arbitrators.

Failing an agreement on a procedure for challenging an arbitrator, the party who challenges an arbitrator shall within four weeks after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in Sect. 588(2) "submit a written statement of the grounds of the challenge to the arbitral tribunal" (Sect. 589(2)). The arbitral tribunal, including the challenged arbitrator, shall then decide on the challenge, provided the challenged arbitrator does not resign from office or the other party does not agree to the challenge. Accordingly, also sole arbitrators will inform the parties whether they intend to resign or not. It follows from the provision that, even if challenged arbitrators refuse to resign, their office is terminated when the other party agrees to the challenge.

If the mandate of an arbitrator is not terminated under the agreed challenge procedure or under the provisions of Sect. 589(2), the challenging party, within four weeks after having received the decision rejecting the challenge, may request a decision of the Austrian Supreme Court concerning the challenge, as

20. Heider, Manfred: Festschrift für Rolf A. Schütze - "*Die Ablehnung von Schiedsrichtern in Verfahren vor dem Internationalen Schiedsgericht der Wirtschaftskammer Österreich*", (Verlag C.H. Beck München 2014); Vanas-Metzler, Elisabeth / Freisehner, Silvia (Vienna International Arbitral Centre), "Objections to Confirmation and Challenges of Arbitrators under the VIAC Rules", 13 Romanian Arbitration Journal (2019, Issue 4).

specified in Sect. 615. According to the Arbitration Law, the arbitral tribunal, including the challenged arbitrator, may proceed and may even render an award while such a request is pending (Sect. 589(3)). It is, therefore, entirely in the discretion of the arbitral tribunal to decide whether it continues the arbitral proceedings or whether it is more beneficial to stay the proceedings until the court has rendered its final decision.

5. TERMINATION OF THE ARBITRATOR'S MANDATE

Section 608(3) ACCP provides:

> "Subject to section 606 paragraphs (4) to (6), section 609 paragraph (5) and section 610, as well as to the obligation to set aside an interim or protective measure, the mandate of the arbitral tribunal terminates upon the termination of the arbitral proceedings."

According to Sect. 606(4), copies of the award have to be delivered to the parties; according to Sect. 606(5), the arbitral tribunal shall discuss with the parties options regarding the storage of the award and the documentation that the award was served; and according to Sect. 606(6), the presiding arbitrator, or in case of his inability another arbitrator, shall upon request of a party "confirm the *res judicata* effect and the enforceability of the award on an exemplar of the award". The latter is a peculiarity of Austrian law, whereby an arbitral award signed and dated by the arbitrators is an enforceable title as such. Therefore – unlike in other countries – no leave for enforcement has to be granted by a court.

Section 590 regulates early terminations of the arbitrator's mandate. According to Sect. 590(1), the mandate of an arbitrator terminates with the parties' agreement or when he resigns. In addition, any party may request that the Austrian Supreme Court terminates the mandate of an arbitrator who "becomes unable to perform his functions or fails to act within a reasonable time period" and (1) the arbitrator does not resign; (2) the parties cannot agree on the termination; or (3) the agreed upon procedure does not lead to the termination of the arbitrator's mandate (Sect. 590(2)).

If a party wishes to continue the arbitration, a substitute arbitrator has to be appointed. According to Austrian law, the original rules for appointment agreed between the parties are applicable. If there is no such agreement, Sect. 587 concerning the appointment of arbitrators applies.

6. LIABILITY OF ARBITRATORS

According to the Austrian Arbitration Law, the arbitrators' agreement with the parties is considered to be an agreement *sui generis* with essential elements of a

works contract ("*Werkvertrag*"). It follows from this that "[a]n arbitrator who does not fulfil his obligation 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" (Sect. 594(4) ACCP). Accordingly, ordinary negligence – but not gross negligence and intent – can be excluded from the agreement between the arbitrators and the parties. For this reason, the Vienna Rules provide that the liability of the arbitrator, the tribunal secretary, the Secretary General, the Deputy Secretary General, the Board and its members, as well as the AFEC and its employees for any act or omission in relation to the arbitration is excluded, unless such act or omission constitutes wilful misconduct or gross negligence. (Art. 46(1) Vienna Rules).

In a decision of the Austrian Supreme Court in 2005 on the issue of liability of arbitrators, it was held that compensation of damages can only be an issue when an award has successfully been challenged and set aside.[21]

Chapter IV. Arbitral Procedure

1. PLACE OF ARBITRATION (SEE ALSO CHAPTER V.3 – FORM OF THE AWARD)

a. Determination

The Austrian Arbitration Law (see **Annex I** hereto) has practically copied the provisions of Art. 20 of the UNCITRAL Model Law. The parties are, therefore, free to agree on the place of arbitration or to delegate the decision to an arbitral institute. In the absence of such an agreement, the place of arbitration shall be determined by the arbitral tribunal, after having taken the circumstances of the case, including the convenience of the parties into account (Sect. 595(1) ACCP).

b. Legal consequences

The place of arbitration as determined above is the legal seat of arbitration in the sense that the corresponding procedural law applies to the arbitral proceedings. Hence, if the parties agree upon a place of arbitration in Austria, the Arbitration Law is applicable (Sect. 577(1)). Unless otherwise agreed by the parties, the arbitral tribunal may meet at any place it considers appropriate for conducting the proceedings, notwithstanding the agreed upon place of arbitration (Sect. 595(2)). This is especially important for international arbitrations where parties or arbitrators may have their place of business or residence outside the agreed or determined (legal) place of arbitration. It is, therefore, possible that no procedural step in a specific arbitration takes place at the agreed or determined seat of arbitration.

21. OGH 9 Ob 126/04a.

The Vienna Rules have adopted identical provisions. They provide an additional default rule, however, that unless the parties have agreed otherwise, the place of arbitration shall be Vienna (Art. 25(1) Vienna Rules).

2. ARBITRAL PROCEEDINGS IN GENERAL

a. Mandatory provisions and party autonomy

Subject to the mandatory provisions of the Arbitration Law, the parties are free to determine the rules of procedure. They may refer to other rules of procedure such as arbitration rules of arbitral institutes or the UNCITRAL Arbitration Rules for *ad hoc* arbitrations. Failing such agreement between the parties, the arbitral tribunal shall conduct the arbitration in such manner as it considers appropriate, subject to the mandatory provisions of this Law (Sect. 594(1) ACCP). The parties shall be treated fairly and be given full opportunity of presenting their case (Sect. 594(2)) and they may be represented or counselled by persons of their choice (Sect. 594(3)). Arbitrators who do not perform their obligations resulting from the acceptance of their appointment at all or in a timely fashion shall be liable to the parties for all damages caused by their culpable refusal or delay (Sect. 594(4), see Chapter III.5 above).

In the Arbitration Law, a series of non-mandatory procedural provisions have been taken or largely copied from Arts. 19, 22, 23, 24, 25 and 26 of the UNCITRAL Model Law, which in turn largely have their origin in the UNCITRAL Arbitration Rules. Although these provisions did not introduce new elements to the past practice in conducting arbitral proceedings, it was felt beneficial to introduce them into the present Arbitration Law. Not least to demonstrate to potential foreign users that they would not face unpleasant surprises when conducting an arbitration in Austria. For the same reasons, these procedural provisions have also largely been incorporated in the Vienna Rules.

As in Art. 22(1) of the UNCITRAL Model Law, the parties are free to agree on the language or languages to be used in the arbitral proceedings; failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings (Sect. 596).

b. Exchange of written pleadings

The provisions on statements of claim and defence correspond with Art. 23 of the UNCITRAL Model Law. According to this, within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall submit the points at issue and the facts supporting its claim, and the respondent shall respond thereto. The parties may attach to their statements all documents they consider to be relevant or may merely refer to the documents or other evidence they will submit (Sect. 597(1)). Unless otherwise agreed by the parties, the parties are entitled to amend or supplement their claim or pleadings during the

arbitral proceedings, unless the arbitral tribunal considers it inappropriate due to delay (Sect. 597(2)).

With regard to the submission of written pleadings and documents in VIAC proceedings, specific provisions apply which reflect the electronic case management system used for the administration of such cases (Arts. 7, 12 and 36 Vienna Rules).

c. Oral hearing

The provisions on hearings and proceedings conducted in writing are taken from Art. 24(1) of the UNCITRAL Model Law. If the parties have not agreed otherwise, the arbitral tribunal has the power to decide whether to hold oral hearings or whether the proceedings shall be conducted in writing. Where the parties have not expressly excluded an oral hearing, the arbitral tribunal shall, upon the motion of a party, hold such oral hearing at an appropriate stage of the proceedings (Sect. 598). These provisions reflect actual practice in arbitration in Austria. Arbitrators who think that they are able to render an award on the basis of the submissions and documents that have been submitted will inform the parties accordingly and will give them a time limit for the submission of a request to the contrary.

In the context of the COVID-19 pandemic, the issue of remote hearings became particularly relevant. The Austrian Supreme Court rendered a decision[22] on the question whether conducting a remote arbitration hearing over the objection of a party may violate due process. In short, the Court confirmed that remote hearings are permissible under the Austrian Arbitration Law, as long as they do not result in serious procedural violations or in permanent and significant (dis)advantages to a party. Accordingly, since the 2021 revision the Vienna Rules also explicitly state that the arbitral tribunal may decide to hold an oral hearing in person or by other means, having due regard to the views of the parties and the specific circumstances of the case (Art. 30(1) Vienna Rules).

3. EVIDENCE

a. General

As in Art. 19(2) second sentence of the UNCITRAL Model Law, according to Sect. 599(1) ACCP, "[t]he arbitral tribunal is authorised to rule upon the admissibility of the taking of evidence, to carry out such taking of evidence and to freely evaluate the result thereof." As in Art. 24(2) and (3) of the UNCITRAL Model Law, "[t]he parties shall be given sufficient advance notice of every hearing and of every meeting of the arbitral tribunal for the purposes of the taking of evidence." (Sect. 599(2)), and "[a]ll written submissions, documents and other communications which are submitted to the arbitral tribunal by one

22. OGH 18 ONc 3/20s.

party shall be communicated to the other party" (Sect. 599(3)). There are no particular rules of evidence arbitrators have to respect in arbitral proceedings in Austria.

b. Witnesses

It is up to the arbitrators how they want to hear the witnesses. In domestic arbitrations, arbitrators may in practice follow the practice of civil court proceedings where witnesses are questioned by the judge and where counsel for the parties will also be given the right to ask questions. In international arbitrations in Austria, however, typically the Anglo-American practice of questioning witnesses is used. Cross- and counter-examinations of witnesses are, therefore, possible.

According to Austrian law, witnesses may not be sworn in by the arbitrators. However, the possibility of having a witness sworn in by a state judge exists if this should be considered necessary by the arbitrators or by the parties. The authors of this Report are, however, not aware of any case in the past where this has happened.

Arbitrators may ask a court to hear a witness domiciled in Austria who refuses to appear before the arbitral tribunal. Judicial assistance may also be requested from a court to hear witnesses who are domiciled outside of Austria before a court in their country (Sect. 602). Such requests have been successfully made in the past.

c. Documentary evidence

There are no legal provisions for the production of written evidence and discovery or disclosure of documents. However, the arbitrators can make such requests if they find it necessary and tell a party failing to comply with such request that they will take this into consideration in their decision.

4. TRIBUNAL-APPOINTED EXPERTS (SEE CHAPTER IV.3 FOR PARTY-APPOINTED EXPERT WITNESSES)

a. Power of tribunal

The provisions on experts have been copied from Art. 26 of the UNCITRAL Model Law. They confirm arbitration practice that already existed before the entry into force of the present Arbitration Law. Unless the parties have agreed otherwise, an arbitral tribunal (1) may appoint an expert to report to it on specific issues to be determined by the arbitral tribunal and (2) may require the parties to give the expert any relevant information and to assist the expert (Sect. 601(1) ACCP). An arbitral tribunal can, therefore, also appoint an expert if one of the parties objects. An oral hearing with the parties and the expert can be ordered if a party so requests or if the arbitral tribunal considers it necessary, unless the parties have agreed otherwise (Sect. 601(2)).

b. Challenge to experts

Section 601(3)) provides that an expert appointed by an arbitral tribunal may be challenged on the same grounds on which arbitrators may be challenged according to Sects. 588 and 589(1) and (2).

According to Art. 23 of the Vienna Rules, the arbitral tribunal shall decide on a challenge of an expert appointed by the arbitral tribunal. Its decision is not subject to appeal before a court.

In addition, unless otherwise agreed by the parties, each party has the right to produce reports of their own experts who may also be asked to participate in an oral hearing (Sect. 601(4)). These party-appointed experts may not be challenged as experts who have been appointed by the arbitral tribunal.

5. INTERIM MEASURES OF PROTECTION (SEE ALSO CHAPTER I.1 – LAW ON ARBITRATION)

a. Power of tribunal to issue

Until the entry into force of the Arbitration Law 2006, interim measures of protection issued by arbitrators were not enforceable in Austria. This does not mean that arbitrators were not allowed to order parties by means of a procedural order or otherwise to do or to omit to do something in the arbitration and to reserve the right to assess non-compliance with such order in the award. An arbitral tribunal could, therefore, order a party to sell perishable goods and advise the party that it would qualify non-compliance with this instruction as non-compliance with the obligation of this party to minimize losses.

For this reason, a provision on interim measures in accordance with Arts. 9 and 17 of the UNCITRAL Model Law had already been included in previous versions of the Vienna Rules. According to Art. 33 of the Vienna Rules, arbitrators are entitled to order interim or conservatory measures on application by a party. It is specifically stipulated that the "parties shall comply with such orders, irrespective of whether they are enforceable before national courts". The arbitrators can also "require any party to provide appropriate security" (Art. 33(1) Vienna Rules).

According to the present Arbitration Law, arbitrators are not only entitled to render interim measures of protection between the parties to the arbitration agreement, but such interim measures rendered by arbitrators are also enforceable in Austria by the state courts in the same way as interim measures rendered by the courts are. As there is a "competition" between arbitral tribunals and state courts, the provision of Art. 9 of the UNCITRAL Model Law – namely that it is not incompatible with an arbitration agreement for a party to request before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure – has been included in the Arbitration Law (Sect. 585 ACCP).

Section 593(1) provides:

> "Unless otherwise agreed by the parties, the arbitral tribunal may, upon request of a party and after hearing the other party, order against the other party such interim or protective measures it deems necessary in respect of the subject-matter in dispute ..."

The arbitral tribunal is entitled to request appropriate security from any party in connection with such measure.

According to the cited provision, the parties can by agreement exclude the power of an arbitral tribunal to grant interim measures of protection. The arbitral tribunal *may* take an interim measure of protection requested by a party. It follows from this, that an arbitral tribunal is also entitled to refuse to order an interim measure of protection requested by a party. In addition, there is a mandatory requirement that an arbitral tribunal can only order an interim measure of protection after hearing the opposing party. It follows that *ex parte* interim measures are excluded from the jurisdiction of arbitral tribunals.

b. Form

As interim measures of protection are enforceable in the same way as interim measures of protection rendered by courts, it was necessary to clarify that such a decision by an arbitral tribunal is not simply a procedural order (which is not enforceable) but an enforceable interim measure of protection. The Arbitration Law therefore contains specific form requirements. Interim measures are to be ordered in writing and a signed copy is to be served on each party; in proceedings with more than one arbitrator the presiding arbitrator shall sign or in the case of his hindrance the signature of another arbitrator shall suffice, provided that the presiding arbitrator or another arbitrator records the reason for any omitted signature on the order.

Unless otherwise agreed by the parties, the order shall state the reasons upon which it is based, it shall be dated and state the place of arbitration. The arbitral tribunal shall discuss with the parties a possible safe-keeping of the order and the documentation of its service, and upon request of a party the presiding arbitrator, or in the case of his hindrance another arbitrator, shall confirm the *res judicata* effect and enforceability of the order on a copy of the order (Sect. 593(2)). Furthermore, the Arbitration Law contains detailed provisions concerning enforcement proceedings before the competent district court (Sect. 593(3)-(6)).

6. REPRESENTATION AND LEGAL ASSISTANCE

According to Sect. 594(3) ACCP, "[t]he parties may be represented or advised by persons of their choosing. This right cannot be excluded or limited." This provision is mandatory. It has also been copied into the Vienna Rules (Art. 13).

It follows that parties to an arbitration may be represented by any person of their choice, irrespective of that person's nationality and professional qualification. The parties may also be assisted by legal counsel or any person of their choice at oral hearings.

There is no provision in the Arbitration Law that a formal power of attorney (in writing) is required. As a precaution, arbitrators and also arbitral institutes will in practice request a formal power of attorney in writing of persons who appear before them. This is especially the case in international arbitrations, as the actual power of representation of attorneys varies from country to country.

7. DEFAULT

According to the Arbitration Law, an arbitral award can be set aside if "a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was for other reasons unable to present its case" (Sect. 611(2) number 2 ACCP). It follows that if a party (claimant or respondent) after due notice fails to appear before the arbitral tribunal, the proceedings may nevertheless go ahead, and the arbitrators may render a binding award. It is, therefore, in practice, necessary that arbitral institutes and arbitrators carefully collect return receipts of all their communications with the parties.

Article 29(2) of the Vienna Rules explicitly holds that the arbitration shall proceed notwithstanding the failure of any party to participate.

8. CONFIDENTIALITY OF THE AWARD AND PROCEEDINGS

Under Austrian law, the parties are free to determine the conduct of the arbitral proceedings. This includes the possibility to agree that arbitral proceedings are confidential. In Austria there is a perception that arbitration proceedings are confidential. However, the Arbitration Law and the Vienna Rules do not contain general provisions on such confidentiality.

There is only one provision in the Arbitration Law, namely Sect. 616(2) ACCP, which provides in respect of setting aside proceedings of arbitral awards that "[u]pon request of a party the public may also be excluded where a legitimate interest in doing so can be shown."

Documents filed in legal proceedings for recognition and enforcement are part of the public record. However, legal acts are not accessible to the public. If one wishes to have access, one will have to prove a legal interest.

Judgments of the Austrian Supreme Court on recognition and enforcement of arbitral awards are not officially published. However, the Austrian Federal Chancellor's Office (*Bundeskanzleramt*), Section Justice, publishes anonymized court decisions online at <www.ris.bka.gv.at/jus>, which can be downloaded per article of the Austrian Arbitration Law. For judgments concerning the

enforcement of arbitral awards, decisions on the basis of Art. V of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") can also be downloaded.

The Vienna Rules contain confidentiality provisions relating to the VIAC Board, the VIAC Secretary General and Deputy Secretary General and the arbitrators (Arts. 2, 4 and 16); further confidentiality obligations apply to VIAC employees by virtue of Sect. 69 of the Federal Statute on the Economic Chambers 1998 ("*Wirtschaftskammergesetz 1998*"). According to Art. 30(2) of the Vienna Rules, hearings shall not be open to the public. In the context of the Arbitration Model Clause (Annex 1 to the Vienna Rules), VIAC notes that parties may, inter alia, wish to stipulate the following in the arbitration clause: the scope of the arbitrators' confidentiality and its extension regarding parties, representatives and experts.

Chapter V. Arbitral Award

1. TYPES OF AWARDS

The Arbitration Law (see **Annex I** hereto) has copied the basic provisions of Art. 31 of the UNCITRAL Model Law concerning the form and contents of the award as well as those of Art. 30 concerning the recording of a settlement in the form of an arbitral award on agreed terms. However, the Law does not contain any detailed definition of the word "award". Decisions concerning the merits of a case may be rendered under the heading of final award, partial award or interim award. Decisions on jurisdiction can be rendered together with a ruling on the merits or by a separate arbitral award (Sect. 592(1) ACCP).

2. MAKING OF THE AWARD

a. Decision-making

Unless the parties have agreed otherwise, any decision shall be made by a majority of all members of an arbitral tribunal. If so authorized by the parties or by all members of the arbitral tribunal, the presiding arbitrator may decide questions of procedure alone (Sect. 604(1) ACCP). This is in line with Art. 29 of the UNCITRAL Model Law.

Where one or more arbitrators do not participate in a vote without justified reasons, the other arbitrators may decide without them. In such cases, the required majority of votes has to be calculated on the basis of the total number of arbitrators. If this relates to an arbitral award, the parties must be notified in advance of the intention of the participating majority to proceed in this manner (Sect. 604(2)).

b. Time limits

There is no time limit in the Arbitration Law for the rendering of an award in Austria. This does not exclude the parties from agreeing upon such a time limit or the application of arbitration rules that provide for such time limits by an arbitral tribunal with its seat in Austria.[23] When the place of arbitration is in Austria and the arbitrators require an extension of the time limit set by the parties or the applicable rules, they must either ask the parties to agree to the needed extension or follow the procedure provided for this purpose in the applicable arbitration rules. Since the Arbitration Law does not provide for a time limit for the rendering of an award, no court would have the jurisdiction to extend such a time limit.

Article 32(2) of the Vienna Rules foresees a time limit for the issuance of the award, i.e., the award shall be rendered no later than three months after the last hearing concerning matters to be decided in an award or the filing of the last authorized submission concerning such matters (typically Post-Hearing Briefs), whichever is later. This time period may be extended by the Secretary General upon reasoned request or upon his or her discretion.

c. Dissenting opinions

A dissenting opinion is not part of an award under the Arbitration Law. If an arbitrator sends the Secretary General of VIAC a dissenting opinion, he or she may serve it on the parties with a note that it is not a part of the award.

3. FORM OF THE AWARD

According to the Arbitration Law, the award "shall be made in writing and shall be signed by the arbitrator or arbitrators" (Sect. 606(1) ACCP. Unless agreed otherwise by the parties, the award shall state the reasons for the decision (Sect. 606(2)). Furthermore, the date on which the award was rendered, and the place of arbitration shall be stated in the award. The award "shall be deemed to have been made on that day and at that place" (Sect. 606(3)).

The Arbitration Law therefore expressly deals with the often occurring situations in international arbitral proceedings in which the parties have either agreed on a place of arbitration in Austria but that the actual arbitral proceedings took place entirely or partially outside Austria, or the award was physically created outside Austria and was signed by the arbitrators through circulation.

Whenever there is more than one arbitrator, the Law provides that "the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the chairman or another arbitrator records on the arbitral award the reason for any omitted signature" (Sect. 606(1)).

23. As in Art. 24 of the ICC Rules of Arbitration in force as from 1 January 1998.

4. JURISDICTION (SEE ALSO CHAPTER II.5 – EFFECT OF THE AGREEMENT)

a. Power of arbitrators
The Arbitration Law follows in essence the language of Art. 16 of the UNCITRAL Model Law. Accordingly, the arbitral tribunal shall rule on its own jurisdiction either together with the ruling on the case, i.e., the arbitral award on the merits, or by a separate arbitral award (Sect. 592(1) ACCP).

b. Form of jurisdictional decision
Under the present Law, the decision on jurisdiction is rendered in the form of an arbitral award. Thus any decision, positive or negative, of the arbitral tribunal on its jurisdiction can be challenged separately in setting aside proceedings.

c. Effect of jurisdictional objection
Even if an action to set aside an arbitral award on jurisdiction by which the arbitral tribunal has confirmed its jurisdiction is still pending, the arbitral tribunal may continue the arbitral proceedings and may even render an award (Sect. 592(3)). It is, therefore, entirely up to the arbitral tribunal to decide whether to continue the arbitral proceedings or to stay the arbitral proceedings until a final and binding decision on its award on jurisdiction has been rendered by the Austrian Supreme Court as specified in Sect. 615.

d. Timing of objection
The Arbitration Law provides that an objection against jurisdiction has to be raised not later than the first submission on the merits. It is expressly stated that a party's participation in the constitution of an arbitral tribunal does not preclude the party from raising such an objection. In addition, the Law provides that an objection that an arbitral tribunal is exceeding its jurisdiction shall be raised as soon as the matter, alleged to be beyond the scope of its authority, is raised during the arbitral proceedings. In either case a later plea shall not be permitted. The arbitral tribunal may, however, accept a later plea if it considers the delay justified (Sect. 592(2)).

5. APPLICABLE LAW

a. Applicable law
The Arbitration Law does not distinguish between domestic and international arbitration. It applies to all arbitrations in Austria. An arbitral tribunal has to decide a dispute in accordance with the provisions (*Rechtsvorschriften*) or rules of law (*Rechtsregeln*) chosen by the parties. Any designation of a law or a legal system of a particular country shall, unless otherwise expressed by the parties, be construed as directly referring to the substantive law of that country and not to its conflict-of-laws rules (Sect. 603(1) ACCP). Failing any designation by the

parties, "the arbitral tribunal shall apply the statutory provisions it considers appropriate" (Sect. 603(2)). When making this decision the arbitrators are consequently not bound by any conflict-of-laws rules; they are, however, only entitled to determine the applicable law but not rules of law, such as the UNIDROIT Principles of International Commercial Contracts. It can be difficult to predict how a specific international arbitral tribunal will determine the law applicable to a dispute. One consideration will certainly be to find the law with the closest connection to the case, if possible.

b. Decisions ex aequo et bono

Decisions *ex aequo et bono* or as *amiable compositeur* are only permitted if the parties have expressly authorized an arbitral tribunal to do so (Sect. 603(3)). This provision is identical to the provision of Art. 28(3) of the UNCITRAL Model Law.

6. SETTLEMENT

If parties have settled a dispute during the arbitral proceedings, according to Austrian law they have two possibilities. The first possibility is to ask the arbitral tribunal to draw up a record of the settlement, provided that the contents of the settlement are not in conflict with Austrian public policy (Sect. 605 number 1 ACCP). According to the Austrian Enforcement Act (see **Annex III** hereto), such a settlement is an enforceable title in Austria and in several countries with which Austria has concluded bilateral enforcement treaties (Art. 1(16).

The second possibility is to request the arbitral tribunal to record the settlement in the form of an arbitral award on agreed terms, provided that the contents of the settlement are not in conflict with Austrian public policy. Such an award has to meet the form requirements of arbitral awards according to Sect. 606 ACCP. It has the same status and effects as any other award on the merits of a case (Sect. 605 number 2). It shall, therefore, state the reasons upon which it is based (the contents of the settlement between the parties) unless the parties have agreed otherwise. This provision corresponds in substance with Art. 30(2) of the UNCITRAL Model Law.

Relevantly, the 2021 revision of the Vienna Rules has introduced a new provision which now expressly states that the arbitral tribunal is entitled at any time during the proceedings to assist the parties in their endeavours to reach a settlement (Art. 28(3) Vienna Rules).

7A. CORRECTION AND INTERPRETATION OF THE AWARD

The Arbitration Law closely follows the provisions of Art. 33 of the UNCITRAL Model Law concerning the correction and interpretation of an award and an

additional award. Unless the parties have agreed upon another period of time, each party may within four weeks of receipt of the award request the arbitral tribunal to correct any errors in computation, any clerical or typographical errors or any errors of a similar nature in the award; to make an additional award as to claims presented in the arbitral proceedings, but not dealt with in the award (Sect. 610(1) numbers 1 and 3 ACCP); and *only* if so agreed by the parties, to interpret certain parts of the award (Sect. 610(1) number 2).

Such applications shall be delivered to the opposing party, which is to be heard by the arbitral tribunal prior to deciding upon such application (Sect. 610(2)). The arbitral tribunal shall decide upon the correction or interpretation of the award within four weeks and upon an additional award within eight weeks (Sect. 610(3)). The arbitral tribunal is entitled to correct any errors in computation, any clerical or typographical errors or errors of a similar nature on its own initiative within four weeks of the date of the award (Sect. 610(4)). The form requirements for awards according to Sect. 606 also "apply to the correction, explanation of the award or to an additional award. The explanation or correction […] form part of the arbitral award" (Sect. 610(5)).

7B. ADDITIONAL AWARD

As already mentioned in Chapter V.7A above, according to Sect. 610(1) number 3 ACCP, a party may apply to the arbitral tribunal within four weeks of receipt of the award "to make an additional award as to claims asserted in the arbitral proceedings but not disposed of in the award". There are no specific form requirements for such additional award, besides the above mentioned ones, and it is within the discretion of the arbitrators who will have to pay for it.

8. FEES AND COSTS

a. Costs in general

While the UNCITRAL Model Law is silent on this matter, the Arbitration Law contains detailed provisions concerning decisions on the costs of arbitration. The basic principle is that, if the arbitral proceedings are terminated either by "the award on the merits, by an arbitral settlement, or by an order of the arbitral tribunal in accordance with paragraph (2)" (Sect. 608(1) ACCP), the arbitral tribunal shall decide upon the obligation to reimburse costs, unless the parties have agreed otherwise.

The arbitral tribunal shall, in exercise of its discretion, take into account the circumstances of the case, in particular the outcome of the proceedings. Accordingly, many awards use the "costs follow the event" principle as a basis, i.e., the losing party is in principle ordered to pay the total amount of the costs of the arbitration. In instances where parties have won some claims and lost

others, the arbitral tribunal will normally apportion the costs. Moreover, arbitrators will take all circumstances of the case into account.

The obligation to reimburse may include any and all reasonable costs appropriate for bringing the action or the defence. If the parties have agreed on the termination of proceedings and have communicated this to the arbitral tribunal, the parties may request a decision on costs together with the notification of the agreement to terminate the proceedings (Sect. 609(1)).

An arbitral tribunal may also decide, upon the request of the respondent, to reimburse its costs in cases where the tribunal has declined its jurisdiction on the grounds that there is no arbitration agreement (Sect. 609(2)). With this provision, an arbitral tribunal has equal standing to a state court in Austria, since the courts are entitled to award the respondents costs of the proceedings even in cases where the court declines its jurisdiction over the case.

Together with the decision on the obligation to reimburse costs, the arbitral tribunal shall, in so far as possible and as far as the costs are not set off against each other, determine the amount of costs to be reimbursed (Sect. 609(3)). The costs of arbitration usually consist of the fees and expenses of the arbitrators, including the rent of hearing rooms, translation and recording costs, etc.; administrative costs of arbitral institutes if an institution has been involved; and costs for the parties' legal assistance.

The arbitrators are free to determine the costs of the arbitration and to apportion them between the parties, as deemed justified. In accordance with these provisions, arbitrators in Austrian practice always decide on the amounts they accept as costs of the arbitration as well as on the distribution of these costs between the parties.

b. Deposit

There is no provision in the Arbitration Law concerning deposits. In institutional arbitration, for example, according to the Vienna Rules, the Secretariat sets the amount of a deposit based on the expected costs of arbitration and asks the parties to pay it in equal shares before the transmission of the files to the arbitrators (Art. 42(4) Vienna Rules). If one party refuses to pay, the other party will be asked to pay the outstanding amount. If the full amount of the requested deposit is not paid, the Secretary General may declare the proceedings terminated (Art. 42(11) Vienna Rules). An institution also determines the final and total costs of the arbitrators' and institution's fees, which the arbitrators then restate and allocate between the parties in their award.

The practice in *ad hoc* arbitration is generally the same. The arbitrators have to agree with the parties on their fees, the deposit for the fees as well as the consequences of non-payment of the full deposit. They will in practice request the parties to pay the agreed-on deposit for their fees and expected expenses and they will refuse to administer the case if the full deposit has not been paid.

c. Fees of arbitrators

In *ad hoc* arbitration, the arbitrators will normally conclude an agreement with the parties, which also contains provisions concerning their fees. In international arbitrations there is a tendency to calculate arbitrators' fees in hourly rates. As already stated, arbitrators will normally not conduct arbitral proceedings before a deposit for the agreed fees and expected expenses has been paid. When they render the award, they will determine their fees and expenses according to the agreement with the parties and state in the award which party or in which portion the parties will have to pay the determined costs of arbitration.

In institutional arbitration, the institution determines the costs of arbitration according to its rules, i.e., administrative and arbitrator fees in most institutions pursuant to their respective schedules, as well as the actual expenses. The institution will then inform the arbitrators of the total amount of arbitration costs which it has determined. The arbitrators will have to decide in their award how the total amount of the determined costs of arbitration has to be borne by the parties to the arbitration.

The Vienna Rules contain a schedule of arbitration costs that can be viewed at <https://www.viac.eu/en/arbitration/content/vienna-rules-2021-online#Annexes_Annex_3>.

d. Costs of legal assistance to parties

In Austria, the costs of legal assistance are considered costs of arbitration and it is in the discretion of an arbitral tribunal to determine these costs, taking into consideration the circumstances of the individual case and the outcome of the proceedings. All awards rendered in Austria will typically deal with the costs of legal assistance.

e. Award on costs

Section 609(4) and (5) ACCP provides:

> "(4) In any case, the decision upon the obligation to reimburse the costs of the proceedings and the determination of the amount shall be made in the form of an arbitral award under section 606.
> (5) If the decision on the obligation to reimburse the costs of the proceedings or the amount to be reimbursed was not made, or was only possible to be made after the termination of the arbitral proceedings, such decision shall be made in a separate arbitral award."

9. NOTIFICATION OF THE AWARD AND REGISTRATION

According to Sect. 606(4) ACCP, a copy of the arbitral award signed by the arbitrators in accordance with Sect. 606(1) shall be delivered to each party. This will usually be done in domestic cases by registered mail with a return receipt

and in international cases by international courier services. Section 606(5) states that "[t]he award and the documentation regarding its service are joint documents of the parties and the arbitrators. The arbitral tribunal shall discuss with the parties a possible safekeeping of the award and the documentation regarding its service." It is, therefore, up to the parties and the arbitrators to determine whether and, in the affirmative, how an original of the award and the documentation of its service shall be registered.

According to the Vienna Rules, the Secretary General shall transmit the award to the parties in hardcopy form. If it is not possible or feasible to send the award in hardcopy form within a reasonable time, or if the parties so agree, the Secretariat may send a copy of the award in electronic form. In this case a copy of the award in hardcopy form may be sent at a later stage. One copy of the award and the documentation of proof of sending shall be deposited with the Secretariat at the Centre (Art. 36(5) Vienna Rules).

10. ENFORCEMENT OF DOMESTIC AND INTERNATIONAL AWARDS RENDERED IN AUSTRIA (SEE ALSO CHAPTER VI – ENFORCEMENT OF FOREIGN ARBITRAL AWARDS)

Under the Austrian Arbitration Law, "[t]he chairman or, in the case he is prevented from doing so, another arbitrator shall, upon request of a party, confirm the *res judicata* effect and the enforceability of the award on an exemplar of the award." (Sect. 606(6) ACCP). According to Austrian enforcement law, an arbitral award rendered in Austria is equal to a judgment of a state court. Therefore, no *exequatur* by a state court is necessary. The arbitral award as such is an enforceable title (Art. 1(16) of the Austrian Enforcement Act (**Annex III**). Regarding recognition and enforcement of foreign awards, see Chapter VII.1.

11. PUBLICATION OF THE AWARD

Subject to the applicable confidentiality provisions, arbitral awards will typically be considered to be confidential documents, which are owned by the parties to the arbitration; accordingly publication requires the consent of the parties. For this reason, arbitral awards are rarely published.

The Vienna Rules contain a provision entitling the Board and the Secretary General of VIAC to "publish anonymized summaries or extracts of awards in legal journals or VIAC's own publications, unless a party has objected to publication within 30 days upon receipt of the award" (Art. 41 Vienna Rules). In line with this provision, VIAC has published the book Selected Arbitral Awards, Volume I, and is currently finalizing Volume II.

Chapter VI. Enforcement of Foreign Arbitral Awards[24]

1. ENFORCEMENT UNDER CONVENTIONS AND TREATIES

a. Conventions applicable

Unlike domestic arbitral awards, which form an enforceable title under Austrian enforcement law, foreign arbitral awards must comply with the applicable provisions on recognition and enforcement. Pursuant to Sect. 577(1) ACCP (see **Annex I** hereto), an award is a domestic award when the place of arbitration is in Austria. When the place of arbitration is not in Austria, an award is a foreign award.

In this context, Austria has ratified several multilateral conventions and bilateral treaties concerning arbitration, which also contain provisions on the recognition and enforcement of arbitral awards (most significantly the New York Convention, see below).

In particular, Austria has ratified the following multilateral conventions:

- Protocol on Arbitration Clauses, Geneva, 24 September 1924 (ratification 25 January 1928);
- Convention on the Execution of Foreign Arbitral Awards, Geneva, 26 September 1927 (ratification 18 July 1930);
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958 (ratification 2 May 1961; on 25 February 1988, Austria withdrew the reciprocity reservation to the New York Convention (published in BGBl. 161/1988)) ("New York Convention");
- European Convention on International Commercial Arbitration, Geneva, 1 April 1961 (ratification 6 March 1964);
- Convention on the Settlement of Investment Disputes between States and Nationals of other States, Washington, 18 March 1965 (ratification 25 May 1971) ("ICSID Convention").

Moreover, in particular, Austria has concluded the following bilateral treaties (which contain more than a mere reference to the provisions of multilateral conventions) with: Belgium (BGBl. 1961/287), British Columbia (BGBl. 1970/314), Germany (BGBl. 1960/105), Liechtenstein (BGBl. 1975/114), Russia (BGBl. 1956/193), Slovenia (BGBl. 1961/115; 1993/714), Switzerland (BGBl. 1962/125).

24. Regarding Enforcement, see, in particular: Nikolaus Pitkowitz, "CHAPTER 10A - §10A.08 International Commercial Arbitration Practice in Austria", in Horacio A. Grigera Naon and Paul E. Mason (eds.), International Commercial Arbitration Practice: 21st Century Perspectives (Matthew Bender Elite Products 2021).

b. Enforcement where conventions are applicable

The Arbitration Law has a specific provision for the recognition and enforcement of foreign arbitral awards. According to Sect. 614(1):

> "The recognition and declaration of enforceability of foreign arbitral awards shall be made in accordance with the provisions of the Enforcement Act ("*Exekutionsordnung*"), unless otherwise provided for in international law or in legal instruments of the European Union."

According to Sect. 614(1), in all cases of recognition and enforcement of foreign arbitral awards in Austria, the provisions of the Enforcement Act, Arts. 406-416 (see **Annex III** hereto) apply. As noted above, Austria has ratified several multilateral conventions and bilateral treaties, including the New York Convention. If a multilateral convention and a bilateral treaty are applicable, the more favourable provisions will be applied.

This means that, within the scope of application of the New York Convention, its provisions take precedence over the relevant Austrian provisions except for those provisions that are more enforcement friendly. Austria has withdrawn its former reservation under Art. I(3) of the New York Convention that it will apply the Convention only in the territory of another Contracting State (the reciprocity reservation). As a consequence, awards made in countries that have not ratified the New York Convention (or any other multilateral convention which Austria has ratified) will also be recognized and enforced in Austria.

Section 614(1) further deals with the form requirements for arbitration agreements on which foreign awards are based:

> "The form requirements for the arbitration agreement shall be deemed to be fulfilled, if the arbitration agreement complies both, with the form requirements under section 583 and under the law applicable to the arbitration agreement."

It follows that the form requirements of Sect. 583 constitute the minimum standard for the enforcement of a foreign award in Austria. However, if the foreign law applicable to the arbitration agreement imposes additional requirements to Sect. 583, these requirements are also applicable and the foreign award will be enforced in Austria only if the arbitration agreement complies with these requirements.

With respect to the formal requirements for the request for recognition and enforcement of a foreign arbitral award, Sect. 614(2) sets a lower standard than Art. IV(1)(*b*) of the New York Convention:

> "The production of the original or a certified copy of the arbitration agreement in accordance with article IV paragraph (1) (b) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards shall only be required upon demand by the court. "

There is no time limit for the application of recognition and enforcement of an arbitral award after this award has become final and binding upon the parties.

The competent court for the leave for enforcement is the district court (*Bezirksgericht*) where the respondent has its seat or domicile or the competent district court for the particular enforcement action. The respondent does not participate in the proceedings for leave for enforcement. The competent court will typically only request the necessary documents as under Art. IV of the New York Convention in the mitigated form under Sect. 614(2). With regard to the authentication and translation of such documents, the relevant legal basis as well as Austrian case law shall be observed. The court will serve its decision (*Beschluss*) to the respondent, which has the possibility to lodge an appeal (*Rekurs*) against this decision within four weeks. Furthermore, the claimant may appeal against the decision if the court has dismissed its application within the same time limit. If the respondent has its place of business outside of Austria and if it has been confronted with the reference only by acceptance of the decision, the time limit for its appeal is eight weeks.

2. ENFORCEMENT WHERE NO CONVENTION OR TREATY APPLIES

Insofar as there are no applicable provisions in international law or legal instruments of the European Union, enforcement is based on Arts. 406-416 of the Enforcement Act (see **Annex III**).

According to Art. 406 of the Enforcement Act, leave for enforcement will only be granted to documents which are enforceable under the laws of the state where they have been made and if reciprocity is guaranteed under state treaties (*Staatsverträge*) or decrees (*Verordnungen*).

The grounds for refusal under Art. 408 of the Enforcement Act read as follows:

> "1. If the adverse party to the petition has been unable to participate in the proceeding before the foreign court or government body due to irregularities in the proceeding;
> 2. If by the declaration of enforceability an action shall be enforced which under the domestic law is either prohibited or unenforceable;
> 3. If by the declaration of enforceability a legal relationship shall be recognized or a claim shall be satisfied which under the domestic law is invalid or non-actionable in respect of public order or morality."

3. RULES OF PUBLIC POLICY

In Austria, the violation of the rules of public policy is always a ground for refusal of enforcement of an award and for setting aside an award (Sect. 611(8) ACCP). Austrian law does not make a distinction between international public

policy and local public policy. In international arbitration, only the criteria of Austrian public policy will be applied. It must be added that the notion of public policy is interpreted very restrictively by Austrian courts.

Chapter VII. Means of Recourse

1. APPEAL ON THE MERITS FROM AN ARBITRAL AWARD

a. Appeal to a second arbitral instance

There are no provisions in the Austrian Arbitration Law (see **Annex I** hereto) for an appeal from an arbitral award to a second arbitral instance for a merits review. However, this does not exclude the possibility to agree upon such two-tier system if the parties wish to do so.

b. Appeal to a court

Under the Arbitration Law, an arbitration agreement is an agreement by the parties to submit certain disputes to arbitration; the parties must clearly express their intention to submit a specific dispute to arbitration. Consequently, the Law also contains provisions as to the relationship between an arbitration agreement and an action before court which must be observed.

With regard to awards, Sect. 606(6) ACCP stipulates that "The chairman or, in the case he is prevented from doing so ,, another arbitrator shall, upon request of a party, confirm the *res judicata* effect and the enforceability of the award on an exemplar of the award." Section 611(1) further clarifies: "Recourse to a court against an arbitral award may be made only by means of an action for setting aside."

Furthermore, Austrian enforcement law clearly provides that domestic arbitral awards have the status of a final and binding decision of the civil courts. It follows that an arbitral award is enforceable as such. An *exequatur* by a state court is, consequently, not necessary and does not exist under Austrian law. With a view to these provisions, an appeal to a court on the merits of the award is not possible.

2. SETTING ASIDE OF THE ARBITRAL AWARD (ACTION FOR ANNULMENT, VACATION OF THE AWARD)

a. Grounds for setting aside

The grounds for setting aside an award in the Arbitration Law follow Art. 34 of the UNCITRAL Model Law and Art. V of the New York Convention. These grounds are exclusive and they also apply to awards by which an arbitral tribunal has ruled on its jurisdiction.

Upon application of a party, an arbitral award shall be set aside if:

- there is no valid arbitration agreement, or if an arbitral tribunal declined its jurisdiction despite the existence of a valid arbitration agreement, or if a party was unable to conclude a valid arbitration agreement under the applicable law (Sect. 611(2) number 1 ACCP);
- a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was for other reasons unable to present its case (Sect. 611(2) number 2);
- the award concerns a dispute not falling within the terms of the arbitration agreement or the award contains decisions on matters beyond the scope of the arbitration agreement or beyond the relief sought by the parties, provided that if the defect concerns only a separable part of the award, just that part of the award shall be set aside (Sect. 611(2) number 3);
- the formation or composition of the arbitral tribunal was not made in accordance with the provisions of Sects. 586-587 ACCP or with an admissible agreement of the parties (Sect. 611(2) number 4);
- the arbitral procedure was conducted in a manner contradicting the fundamental values of the Austrian legal system (*ordre public*/public policy) (Sect. 611(2) number 5);
- the requirements have been met under which a court judgment can be challenged by an action for revision under Sect. 530(1) numbers 1 to 5[25] (Sect. 611(2) number 6).

25. Sect. 530 ACCP "Application to Re-open a Case" reads:

(1) A case concluded by a judgment can be re-opened on application of a party,
1. if a document on which the judgment was based was completely or partially forged;
2. if a witness or expert of the opposing party has given false testimony during his examination and the judgment is based on this testimony;
3. if the judgment was given as a result of an act punishable by law, whether as wilful misrepresentation (Art. 108 of the Penal Code (PC)), embezzlement (Art. 134 PC), fraud (Art. 146 PC), forgery of documents (Art. 223 PC), forgery of documents especially protected by the law (as defined in Art. 224 PC), forgery of public seals (Art. 225 PC), indirect false recording or certification (Art. 228 PC), suppression of documents (Art. 229 PC), or of displacement of boundary marks (Art. 230 PC), on the part of the representative of the party, or of the opposing party or its representative;
4. if the judge when issuing the decision or an earlier decision on which the decision is based has been guilty of criminal negligence of his official duties to the prejudice of the applicant;
5. if a decision by a criminal court on which the judgment is based has been set aside by a subsequent final judgment;
6. if the applicant discovers the existence of, or is placed in a position to use a previous judgment concerning the same claim or the same legal relationship which is already final and which determines the rights of and between the parties of the case to be re-opened;
7. if the applicant has discovered or is placed in a position to use new facts or evidence which would have resulted in a more favourable decision for the applicant on the merits if they had been presented in the previous hearing.

An arbitral award shall be set aside upon application of a party or by the court *ex officio* if:

– the subject matter of the dispute is not arbitrable under Austrian Law (Sect. 611(2) number 7);
– the award is in conflict with the fundamental values of the Austrian legal system (public order) (Sect. 611(2) number 8).

According to the special provisions for consumers (Sect. 617), which apply also to labour law cases (Sect. 618), an arbitral award shall also be set aside if in arbitral proceedings in which a consumer is involved:

– mandatory legal provisions have been violated, the application of these provisions could not be waived by the parties' through choice of law even in a case with an international element (Sect. 617(6) number 1); or
– the requirements are fulfilled according to which a court judgment could be appealed by means of an application for revision pursuant to Sect. 530(1) numbers 6 and 7; in this case the time period for the filing of an motion for setting aside shall be assessed under the respective provisions concerning the application for revision (Sect. 617(6) number 2);
– the arbitral proceedings took place between an entrepreneur and a consumer, if the consumer did not receive written legal advice on the significant differences between arbitration and court proceedings prior to concluding the arbitration agreement as stipulated in para. 3 (Sect. 617(7)).

The setting aside of an arbitral award has no effect on the validity of the underlying arbitration agreement. It follows that after the setting aside of an award, new arbitral proceedings can be commenced within the framework of the arbitration agreement. However, when an arbitral award on the same subject matter has already been finally set aside twice and when another arbitral award on the same subject matter is to be set aside, at the request of a party the court shall concurrently declare the arbitration agreement invalid with respect to that subject matter (Sect. 611(5)).

b. Procedure

The action for setting aside must be brought to the Austrian Supreme Court as specified in Sect. 615 ACCP within three months, beginning with the day on which the claimant has received the award or the additional award (Sect. 611(4)). An application for correction of any errors in the award or for an interpretation

(2) The re-opening of the case under numbers 6 and 7 is only permissible if the applicant was unable without fault on his part to assert the finality of the judgment or the new facts or evidence before the end of the oral hearing after which the judgment in First Instance was given.

of certain parts of the award (Sect. 610(1) numbers 1 and 2) shall not extend this time period.

When the setting aside proceedings are initiated on the same grounds according to which a court judgement can be appealed by an action for revision under Sect. 530(1) numbers 1-7, the time period for the action for setting aside an arbitral award shall be assessed by the respective provisions regarding the action for revision.

Section 611(2) number 6 refers to the criminal offences listed in Sect. 530(1) numbers 1-5. The filing period for setting aside an award on these grounds ends four weeks (Sect. 534(1)) after the relevant criminal judgment has become final (Sect. 534(2) number 3); after the expiry of ten years from the date on which the decision becomes final, the action may no longer be brought (Sect. 534(3)).

Section 617(6) number 2 concerns the cases of Sect. 530(1) numbers 6 and 7. Here the filing period for setting aside an award ends four weeks from the date on which the applicant party was able to use the final decision or to submit to the court facts and evidence which it had discovered (Sect. 534(2) number 4); after the expiry of ten years from the date on which the decision becomes final, the action may no longer be brought (Sect. 534(3)).

c. Waivers

The grounds for setting aside an arbitral award under Sect. 611(2) numbers 1-6 entitle a party to request the Austrian Supreme Court to set aside an award on these grounds. It follows that a party to an arbitration has the choice to request an award to be set aside by the competent courts on these grounds or to accept the award as it is. A prior exclusion of these grounds by a contract between the parties, for example, in the arbitration agreement, would be considered being *contra bono mores* and, therefore, invalid. This is expressly the case in the two cases which are to be examined by the court *ex officio*, namely if the subject matter of the dispute is not arbitrable under Austrian law, or if the award is in conflict with Austrian public policy (Sect. 611(2) numbers 7 and 8).

3. OTHER MEANS OF RECOURSE

The Arbitration Law also contains a provision on the declaration of existence or non-existence of an arbitral award. According to Sect. 612 ACCP, an applicant who has a legal interest can apply to the Austrian Supreme Court as specified in Sect. 615 for a declaration of the existence or non-existence of an arbitral award.

There are no other means of recourse against an arbitral award, besides the means mentioned above.

Chapter VIII. Conciliation/Mediation

1. GENERAL

a. ADR in Austria

Mediation has become an attractive alternative or addition to civil court proceedings and arbitration over the past years in Austria. The international trend in favour of mediation techniques has also reached Austria.

In June 2003, the Austrian Mediation Act[26] received Parliamentary approval and came into force on 1 May 2004 (see **Annex II**). The existence of this law has stimulated the developments in this area enormously.

It must be said that judges in civil proceedings have already previously had a tendency to explore the possibility of a settlement of a case at the beginning of court proceedings, that the Austrian judiciary generally supports the concept of mediation, and that there are even several legal provisions in Austria providing for compulsory mediation.

There are no statistics available about the use of mediation in Austria. It is known that mediation is used as a means for the settlement of disputes, including commercial matters. It seems, however, that court proceedings are still superior in numbers over mediation. One of the reasons for this might be that civil courts in Austria have always functioned relatively quickly and at relatively low cost (see already above regarding domestic disputes).

As practical examples, mediation techniques have been used in connection with the enlargement of Vienna airport between the airport company and affected neighbours and in connection with the establishment of a Vienna Waste Management plan.

VIAC has promoted different methods of ADR for over thirty years. Initially it offered conciliation proceedings as part of the VIAC Rules of Arbitration ("Vienna Rules"). Since 2016, VIAC has implemented the VIAC Rules of Mediation ("Vienna Mediation Rules") which were revised in 2018 and in 2021. VIAC is able to administrate all proceedings in the field of amicable dispute resolution supported by a neutral third party under the rules as they are framed not only to cover mediation proceedings but generally to ADR proceedings. It must be said, however, that so far these services are rarely used.

b. Institutions

According to Art. 8 of the Austrian Mediation Act, the Federal Minister of Justice shall maintain a list of mediators which shall be published electronically in an appropriate way. This list of mediators is available on the website

26. *Zivilrechts- Mediations- Gesetz - ZivMediatG sowie Änderungen des Ehegesetzes, der Zivilprozessordnung, der Strafprozessordnung, des Gerichtsgebührengesetzes und des Kindschafts-Änderungsgesetzes 2001*, BGBl. I. 29/2003.

<www.mediatorenliste.justiz.gv.at>. There are several associations and platforms for mediators in Austria.

VIAC as an institution administers, besides arbitrations, also proceedings pursuant to other alternative dispute resolution methods, if the parties have agreed upon the Vienna Mediation Rules or the VIAC Rules of Investment Mediation ("Vienna Investment Mediation Rules") (Art. 1(1) Vienna Mediation Rules).

2. LEGAL PROVISIONS

According to Art. 1 of the Austrian Mediation Act:

> "(1) Mediation is an activity voluntarily entered into by the Parties, whereby a professionally trained neutral facilitator (Mediator) using recognized methods systematically encourages communication between the Parties, with the aim of enabling the Parties to themselves reach a solution of their dispute. (2) Mediation concerning civil law matters is mediation to resolve conflicts for which decisions the civil courts would have jurisdiction."

One of the main achievements of the Austrian Mediation Act is to organize and to control all professional mediators under the supervision of the Austrian Minister of Justice in one list of registered mediators which the Ministry maintains and reviews and which it is required to publish electronically (Art. 8). For this purpose several entities, an Advisory Council (Arts. 4-6) and a Board for Mediation (Art. 7) have been established. The Mediation Act sets standards for the registration of persons in the list of mediators, who are, when registered, entitled to the designation "registered mediator". It also sets the standards for and registers training institutions and courses in the area of mediation in civil matters. The Mediation Act regulates in general terms the rights and obligations of "registered mediators", but it does not contain rules for the conduct of conciliation, as in the UNCITRAL Conciliation Rules.

An important provision for the acceptance of mediation in practice is found in Art. 22(1):

> "The beginning and the proper continuation of the mediation by a registered mediator suspends the application of the start and running of the statute of limitations as well as other time limits concerning rights and claims which are affected by the mediation."

This provision is certainly a practical incentive to make use of mediation in Austria.

Chapter IX. Investment Treaty Arbitration

1. CONVENTIONS AND TREATIES

By March 2023, Austria had concluded sixty bilateral investment treaties ("BITs"), forty-eight of which are non-intra-EU BITs with the following countries: Albania, Algeria, Argentina, Armenia, Azerbaijan, Bangladesh, Belarus, Belize, Bosnia and Herzegovina, Chile, China, Cuba, Egypt, Ethiopia, Georgia, Guatemala, Hong Kong, Iran, Jordan, Kazakhstan, Kyrgyzstan, Kosovo, Kuwait, Lebanon, Libya, Malaysia, Morocco, Mexico, Moldavia, Mongolia, Montenegro, Namibia, North Macedonia, Oman, Paraguay, Philippines, Russian Federation, Saudi Arabia, Serbia, South Korea, Tadzhikistan, Tunisia, Turkey, Ukraine, Uzbekistan, United Arab Emirates, Vietnam and Yemen.[27]

Austria also makes use of a model BIT.[28] In light of international developments, the Austrian Foreign Trade Strategy includes a revision of the model text of 2008.[29]

A review of these BITs reveals that all of the BITs to which Austria is a party provide for settlement of disputes by arbitration, but in quite diverse ways.

2. INVESTMENT ARBITRATION

To the knowledge of the authors, Austria has been party to an investment arbitration once, in 2015[30] under the BIT concluded with Malta; the proceedings were decided in favour of Austria.

On 1 July 2021, new stand-alone VIAC Rules of Investment Arbitration and Mediation 2021 came into force ("Vienna Investment Arbitration and Vienna Investment Mediation Rules 2021").[31] It is largely based on the well-tried concept of the VIAC Arbitration and Mediation Rules for commercial disputes ("Vienna Rules and Vienna Mediation Rules 2021"), supplemented by special features that are essential to investment proceedings.

The Vienna Investment Arbitration Rules are intended to apply by agreement to the arbitration of investment disputes arising under a contract, treaty, statute

27. The texts of these BITs are available at: <https://www.bmaw.gv.at/Themen/International/Handels-und-Investitionspolitik/Investitionspolitik/BilateraleInvestitionsschutzabkommen-Laender.html>.
28. Available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4770/download>.
29. See <www.bmeia.gv.at/en/european-foreign-policy/foreign-trade/investment-protection/> (last accessed 29 September 2023).
30. See <investmentpolicy.unctad.org/investment-dispute-settlement/cases/623/belegging-maatschappij-far-east-v-austria> (last accessed 29 September 2023).
31. Available at <https://www.viac.eu/en/investment-arbitration/vienna-investment-arbitration-and-mediation-rules>.

or other instrument and involving a state, a state-controlled entity or an intergovernmental organization. The Vienna Investment Mediation Rules complement the Vienna Investment Arbitration Rules, and may be used either independently of, or in conjunction with, arbitration proceedings.

3. NATIONAL INVESTMENT LEGISLATION

Austria's national investment legislation provides only for screenings of Foreign Direct Investments[32] under certain circumstances, such as acquisitions of companies in areas of critical infrastructure, when the planed transaction could endanger national security or the public order. The foreign investment legislation contains no provisions relating to any form of dispute settlement.

32. *Investitionskontrollgesetz sowie Änderung des Außenwirtschaftsgesetzes 2011*; BGBl. I Nr. 87/2020.

ANNEX I

AUSTRIAN ARBITRATION ACT

(Sections 577-618 Austrian Code of Civil Procedure Fourth Chapter – Arbitration Procedure)*

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* Law of 1 August 1895 Austrian Code of Civil Procedure, RGBl. Nr. 113/1895 as amended by the 2013 Amendment to the Austrian Arbitration Act - "SchiedsRÄG 2013", BGBl. I Nr. 118/2013 in force as of 1 January 2014. This translation was made by Stefan Riegler / Alice Fremuth-Wolf / Martin Platte (cf. Riegler/Petsche/Fremuth-Wolf/Platte and Liebscher, *Arbitration Law of Austria: Practice and Procedure*, Juris Publishing, Huntington, New York, 2007, Chapter 5) and was revised with respect to the amendments made in Sections 615-618.

FIRST TITLE – GENERAL PROVISIONS

Section 577. Scope of Application

(1) The provisions of this Chapter shall apply if the seat of the arbitral tribunal is within Austria.

(2) Sections 578, 580, 583, 584, 585, 593 paragraphs (3) to (6), sections 602, 612 and 614 shall also apply if the seat of the arbitral tribunal is not within Austria or has not yet been determined.

(3) As long as the seat of the arbitral tribunal has not yet been determined, the Austrian courts shall have jurisdiction for those judicial matters stipulated in the Third Title hereof if one of the parties has its seat, domicile or habitual residence within Austria.

(4) The provisions of this Chapter shall not be applicable to panels according to the Austrian Act on Associations and Societies ("*Vereinsgesetz*") for the conciliation of disputes arising out of disputes within an association or society ("*Verein*").

Section 578. Court Intervention
In matters governed by this Chapter, no court shall intervene except where so provided in this Chapter.

Section 579. Duty to Object
If the arbitral tribunal has not complied with a procedural provision of this Chapter from which the parties may derogate, or with an agreed procedural requirement of the arbitral proceedings, a party who proceeds with the arbitral proceedings without stating its objection immediately after having become aware thereof, or within the provided time period, may not raise that objection later.

Section 580. Receipt of Written Communications
(1) Unless otherwise agreed by the parties, any written communication is deemed to have been received on the day upon which it is delivered personally to the addressee or to an authorized recipient or, if this was not possible, on the day upon which it is delivered to the seat, domicile or habitual residence of the recipient.

(2) Where the addressee has knowledge of the arbitral proceedings and where his or the authorized recipient's whereabouts remain unknown despite reasonable inquiries, any written communication is deemed to have been received on the day upon which orderly delivery was demonstrably attempted at a place indicated by the addressee in the arbitration agreement or subsequently indicated to the other party or to the arbitral tribunal and which has not hitherto been revoked upon indication of a new address.

(3) Paragraphs (1) and (2) shall not apply to communications in court proceedings.

SECOND TITLE: ARBITRATION AGREEMENT

Section 581. Definition
(1) An arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. The arbitration agreement may be concluded in the form of a separate agreement or as a clause within a contract.

(2) The provisions of this Chapter shall apply accordingly to arbitral tribunals that are, in a legally valid manner, mandated by testamentary disposition or other legal transactions that are not based on agreements by the parties or through articles of association or incorporation.

Section 582. Arbitrability
(1) Any claim involving an economic interest that lies within the jurisdiction of the courts of law can be subject of an arbitration agreement. An arbitration agreement concerning claims not involving an economic interest shall have legal effect to the extent that the parties are entitled to conclude a settlement on the subject-matter in dispute.

(2) Claims in family law matters as well as all claims based on contracts that are even only partly subject to the Tenancy Act ("*Mietrechtsgesetz*") or to the Non-Profit Housing Act ("*Wohnungsgemeinnützigkeitsgesetz*"), including all disputes regarding the conclusion, existence, termination and legal characterization of such contracts and all claims concerning the condominium property may not be made subject of an arbitration agreement. Statutory provisions outside this Chapter by virtue of which certain disputes

may not, or may only under certain conditions, be made subject to arbitral proceedings, remain unaffected.

Section 583. Form of Arbitration Agreement

(1) The arbitration agreement must be contained either in a written document signed by the parties or in letters, telefax, e-mails or other means of transmitting messages exchanged between the parties, which provide a record of the agreement.

(2) The reference in a contract complying with the form requirements of paragraph (1) to a document containing an arbitration agreement constitutes an arbitration agreement, provided that the reference is such as to make that arbitration agreement part of the contract.

(3) A defect in the form of the arbitration agreement is cured in the arbitral proceedings by entering into argument on the substance of the dispute, unless an objection is raised, at the latest, when entering into argument on the substance of the dispute.

Section 584. Arbitration Agreement and Action before Court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall reject the claim, unless the defendant makes submissions on the substance of the dispute or orally pleads before the court without making an according objection. This shall not apply if the court establishes that the arbitration agreement does not exist or is incapable of being performed. While such proceedings are pending before a court, arbitral proceedings may nevertheless be commenced or continued and an award may be made.

(2) If an arbitral tribunal denies its jurisdiction for the matter in dispute because an arbitration agreement relating to the matter does not exist, or the arbitration agreement is incapable of being performed, the court may not reject an action on this matter on the grounds that an arbitral tribunal has jurisdiction for the matter. The right of the claimant to bring an action under section 611 for setting aside the decision, with which the arbitral tribunal denied its jurisdiction, ceases when he brings an action in court.

(3) While arbitral proceedings are pending, no further action may be brought before a court or an arbitral tribunal concerning the asserted claim; an action brought because of the same claim shall be rejected. This shall not apply if an objection to the jurisdiction of the arbitral tribunal was raised with the arbitral tribunal, at the latest, when entering into argument on the substance of the dispute and a decision of the arbitral tribunal thereon cannot be obtained within a reasonable period of time.

(4) If an action is rejected by a court due to the jurisdiction of an arbitral tribunal, or by an arbitral tribunal due to the jurisdiction of a court or of another arbitral tribunal, or when an arbitral award is set aside in setting aside proceedings due to lack of jurisdiction of the arbitral tribunal, the proceedings are deemed to have been properly continued if the action is immediately brought before the court or arbitral tribunal.

(5) A party that invoked the existence of an arbitration agreement at an earlier stage in the proceedings may not, at a later stage, claim that such agreement does not exist unless the relevant circumstances have changed since.

Section 585. Arbitration Agreement and Interim Measures by Court
It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim or protective measure and for a court to grant such measure.

THIRD TITLE: CONSTITUTION OF THE ARBITRAL TRIBUNAL

Section 586. COMPOSITION OF THE ARBITRAL TRIBUNAL
(1) The parties are free to agree on the number of arbitrators. If the parties have, however, agreed on an even number of arbitrators, then these shall appoint a further person as chairman.

(2) Unless otherwise agreed by the parties, the number of arbitrators shall be three.

Section 587. Appointment of arbitrators
(1) The parties are free to agree on the procedure for appointing the arbitrator or arbitrators.

(2) Failing such agreement on the appointment procedure, the following shall apply:

1. In arbitral proceedings with a sole arbitrator, if the parties are unable to agree on the arbitrator within four weeks of receipt of a request to do so from the other party, the arbitrator shall, upon request by either party, be appointed by the court.
2. In arbitral proceedings with three arbitrators, each party shall appoint one arbitrator. The two arbitrators thus appointed shall appoint the third arbitrator who shall act as chairman of the arbitral tribunal.
3. If more than three arbitrators have been provided for, each party shall appoint the same number of arbitrators. The arbitrators thus appointed shall appoint a further arbitrator who shall act as chairman of the arbitral tribunal.
4. If a party fails to appoint an arbitrator within four weeks of receipt of a written request to do so from the other party, or if the parties do not receive notification by the arbitrators regarding the arbitrator to be appointed by them within four weeks of their appointment, the arbitrator shall, upon request by either party, be appointed by the court.
5. A party is bound by its appointment of an arbitrator as soon as the other party has received written notice of the appointment.

(3) Where the parties have agreed on the appointment procedure and

1. a party fails to act as required under such procedure, or
2. the parties or the arbitrators are unable to reach an agreement in accordance with such procedure, or
3. a third party fails to perform any function entrusted to it under such procedure within three months of receipt of an according written notice,

either party may request from the court to make the necessary appointment, unless the agreed appointment procedure provides for other means for securing the appointment.

(4) The written request for the appointment of an arbitrator shall also state which claim is being asserted and on which arbitration agreement the party is relying.

(5) Where several parties that are under the obligation to jointly appoint one or more arbitrators have not been able to agree upon such appointment within four weeks of receipt of a written notice to do so, the arbitrator or the arbitrators shall, upon request by

either party, be appointed by the court, unless the agreed appointment procedure provides otherwise.

(6) The arbitrator or the arbitrators shall also be appointed by the court upon request by either party if within four weeks of receipt of a written notice from one party to the other party his or their appointment cannot be made for reasons which are not regulated in the preceding paragraphs, or if the appointment procedure for securing an appointment does not result in an appointment within a reasonable period of time.

(7) If the appointment is made prior to the decision in first instance and a party provides evidence thereof, the request shall be dismissed.

(8) The court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) A decision by which an arbitrator is appointed shall not be subject to appeal.

Section 588. Grounds for Challenge

(1) When a person intends to assume the office of an arbitrator, he shall disclose any circumstances likely to give rise to doubts as to his impartiality or independence, or which are in conflict with the agreement of the parties. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties, unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess the qualifications agreed upon by the parties. A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made, or after its participation in the appointment.

Section 589. Challenge Procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3).

(2) Failing such agreement, a party who challenges an arbitrator shall, within four weeks after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 588 paragraph (2), submit a written statement of the grounds of the challenge to the arbitral tribunal. Unless the challenged arbitrator resigns from office, or the other party agrees to the challenge, the arbitral tribunal, including the challenged arbitrator, shall decide on the challenge.

(3) If a challenge under a procedure agreed upon by the parties or under the procedure set forth in paragraph (2) is not successful, the challenging party may, within four weeks after having received the decision rejecting the challenge, request from the court to decide on the challenge. The court's decision shall not be subject to appeal. While such request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Section 590. Early Termination of an Arbitrator's Mandate

(1) The mandate of an arbitrator terminates when the parties agree so or when he resigns. Subject to the provisions of paragraph (2), the parties may agree on a procedure for the termination of the arbitrator's mandate.

(2) Either party may request from the court to decide on the termination of the mandate when an arbitrator either becomes unable to perform his functions or fails to act within a reasonable time period and

1. the arbitrator does not resign,
2. the parties cannot agree on the termination of the mandate, or
3. the procedure agreed upon by the parties does not lead to the termination of the arbitrator's mandate.

Such decision shall not be subject to appeal.

(3) If an arbitrator resigns in accordance with paragraph (1) or section 589 paragraph (2), or if a party agrees to the termination of the arbitrator's mandate, this does not imply acceptance of the validity of any ground referred to in paragraph (2) or section 588 paragraph (2).

Section 591. Appointment of a Substitute Arbitrator

(1) Where an arbitrator's mandate terminates early, a substitute arbitrator shall be appointed. Such appointment shall be made in accordance with the rules that were applicable to the appointment of the arbitrator who is being replaced.

(2) Unless otherwise agreed by the parties, the arbitral tribunal may continue the proceedings on the basis of the results of the proceedings up to that point, in particular the existing minutes of the hearings as well as any other records.

FOURTH TITLE: JURISDICTION OF THE ARBITRAL TRIBUNAL

Section 592. Competence of the Arbitral Tribunal to Rule on Its Own Jurisdiction

(1) The arbitral tribunal shall rule on its own jurisdiction. The decision may be made together with the decision on the merits or by separate arbitral award.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the first pleading on the substance of the dispute. A party is not precluded from raising such plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is made the subject of a request for relief. A later plea is barred in both cases; if the arbitral tribunal, however, considers the delay sufficiently excused, the plea may subsequently be raised.

(3) Even while an action for the setting aside of an arbitral award with which the arbitral tribunal accepted its jurisdiction is still pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Section 593. Ordering of Interim or Protective Measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, upon request of a party and after hearing the other party, order against the other party such interim or protective 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 there were a risk of irreparable harm. The arbitral tribunal may request any party to provide appropriate security in connection with such measure.

(2) Measures referred to in paragraph (1) shall be in writing; a signed exemplar of the order shall be served upon each party. In arbitral proceedings with more than one arbitrator the signature of the chairman or, if he is prevented from signing, the signature

of another arbitrator shall suffice, provided that the chairman or another arbitrator records on the order the reason for any omitted signature. Section 606 paragraphs (2), (3), (5) and (6) shall apply accordingly.

(3) Upon request of a party the District Court ("*Bezirksgericht*") in whose district the opponent of the party at risk has its seat, domicile or habitual residence within Austria at the time of the first filing of the request, otherwise the District Court ("*Bezirksgericht*") in whose district the enforcement of the interim or protective measure shall be carried out, shall enforce such measure. Where the measure provides for a means of protection unknown to Austrian law, the court may, upon request and after hearing the other party, enforce such measure of protection under Austrian law which comes closest to the measure ordered by the arbitral tribunal. In this case the court may also, upon request, reformulate the measure ordered by the arbitral tribunal in order to safeguard the realization of its purpose.

(4) The court shall refuse to enforce a measure under paragraph (1) if

1. the seat of the arbitral tribunal is within Austria and the measure suffers from a defect which would constitute grounds for setting aside an arbitral award made in Austria pursuant to sections 611 paragraph (2), 617 paragraphs (6) and (7) or section 618;
2. the seat of the arbitral tribunal is not within Austria and the measure suffers from a defect which would constitute grounds for refusal of recognition or enforcement of a foreign arbitral award;
3. the enforcement of the measure would be incompatible with an Austrian court measure which was either requested or issued previously, or with a foreign court measure which was issued previously and must be recognized;
4. the measure provides for a means of protection unknown to Austrian law and no appropriate means of protection as provided by Austrian law has been requested.

(5) The court may hear the other party prior to ruling on the enforcement of the measure under paragraph (1). If the other party has not been heard prior to the ruling, it may file an objection against the granting of the enforcement ("*Widerspruch*") within the meaning of section 397 Enforcement Act ("*Exekutionsordnung*"). In both cases the other party may only rely on grounds for refusing the enforcement as set out in paragraph (4). In these proceedings the court has no jurisdiction to rule on claims for damages pursuant to section 394 Enforcement Act ("*Exekutionsordnung*").

(6) The court shall, upon request, set aside the enforcement if

1. the term of the measure as set by the arbitral tribunal has expired;
2. the arbitral tribunal has limited the scope of or set aside the measure;
3. one of the cases set out in section 399 paragraph (1) numbers 1 to 4 Enforcement Act ("*Exekutionsordnung*") exists, unless such a circumstance was unsuccessfully raised with the arbitral tribunal and no obstacles to recognizing (paragraph 4) the decision of the arbitral tribunal exist in this regard;
4. security pursuant to paragraph (1) has been provided that the enforcement is superfluous.

FIFTH TITLE: CONDUCT OF THE ARBITRAL PROCEEDINGS

Section 594. General Provisions

(1) Subject to the mandatory provisions of this Chapter, the parties are free to agree on the rules of procedure. In doing so they may also refer to arbitration rules. Failing such agreement, the arbitral tribunal shall proceed in accordance with the provisions of this Title, and in other respects in such manner as it considers appropriate.

(2) The parties shall be treated fairly. Each party shall be granted the right to be heard.

(3) The parties may be represented or advised by persons of their choosing. This right cannot be excluded or limited.

(4) An arbitrator who does not fulfil his obligation 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.

Section 595. Seat of the Arbitral Tribunal

(1) The parties are free to agree on the seat of the arbitral tribunal. They may also leave the determination of the seat of the arbitral tribunal to an arbitral institution. Failing such agreement, the seat shall be determined by the arbitral tribunal having due regard to the circumstances of the case, including the convenience of such place for the parties.

(2) Notwithstanding the provisions of paragraph (1), the arbitral tribunal may, unless otherwise agreed by the parties, convene at any place it considers appropriate for conducting proceedings, especially for deliberation among its members, making decisions, conducting oral hearings and taking evidence.

Section 596. Language of Proceedings

The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings.

Section 597. Statements of Claim and Defense

(1) Within the time period agreed by the parties or determined by the arbitral tribunal, the claimant shall state the relief and remedy sought and the facts supporting his claim and the respondent shall respond thereto. The parties may submit with their statements all documents they consider to be relevant, or may indicate the documents or other evidence they intend to submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement its claim or pleadings during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment due to delay.

Section 598. Oral Hearings and Written Proceedings

Unless the parties have agreed otherwise, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted in writing. Where the parties have not excluded an oral hearing, the arbitral tribunal shall hold such hearing at an appropriate stage of the proceedings if so requested by a party.

Section 599. Proceedings and Taking of Evidence

(1) The arbitral tribunal is authorised to rule upon the admissibility of the taking of evidence, to carry out such taking of evidence and to freely evaluate the result thereof.

(2) The parties shall be given sufficient advance notice of every hearing and of every meeting of the arbitral tribunal for the purposes of the taking of evidence.

(3) All written submissions, documents and other communications which are submitted to the arbitral tribunal by one party shall be communicated to the other party. Expert opinions and other evidence on which the arbitral tribunal may rely in its decision shall be communicated to both parties.

Section 600. Default of a Procedural Act

(1) Where the claimant fails to submit the statement of claim in accordance with section 597 paragraph (1), the arbitral tribunal shall terminate the proceedings.

(2) Where the respondent fails to respond in accordance with section 597 paragraph (1) within the agreed or stipulated time period, the arbitral tribunal shall, unless otherwise agreed by the parties, continue the proceedings without treating such failure in itself as an admission of the claimant's allegations. The same shall apply where a party is in default with any other procedural act. The arbitral tribunal may continue the proceedings and may render a decision based on the evidence before it. Where, in the arbitral tribunal's opinion, the default is sufficiently excused, the omitted procedural act may subsequently be carried out.

Section 601. Expert Appointed by Arbitral Tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal may

1. appoint one or more experts to report on specific issues to be determined by the arbitral tribunal;
2. require the parties to provide the expert with any relevant information, or to provide with, or to provide access to, any relevant documents or objects for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after submission of his report, attend an oral hearing. At this hearing the parties may put questions to him and may present their own expert witnesses in order to testify on the points at issue.

(3) Sections 588 and 589 paragraphs (1) and (2) shall apply accordingly to the expert appointed by the arbitral tribunal.

(4) Unless otherwise agreed by the parties, each party has the right to submit reports of its own experts. Paragraph (2) shall apply accordingly.

Section 602. Judicial Assistance

The arbitral tribunal, arbitrators who have been authorised accordingly by the arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the court to conduct judicial acts for which the arbitral tribunal has no authority. The judicial assistance may also consist of the court requesting a foreign court or administrative authority to conduct such acts. Section 37 paragraphs (2) to (5) and sections 38, 39 and 40 Judicature Act ("*Jurisdiktionsnorm*") apply accordingly, subject to the proviso that the arbitral tribunal and the parties to the arbitral proceedings shall have the right to appeal pursuant to section 40 Judicature Act ("*Jurisdiktionsnorm*"). The arbitral tribunal, or an arbitrator who has been authorised accordingly by the arbitral tribunal, and the parties may participate in the taking of evidence by the court and may put questions. Section 289 shall apply accordingly.

SIXTH TITLE: MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Section 603. Applicable Substantive Law

(1) The arbitral tribunal shall decide the dispute in accordance with such statutory provisions or rules of law as agreed upon by the parties. Any agreement as to the law or the legal system of a given state shall be construed, unless the parties have expressly agreed otherwise, as directly referring to the substantive law of that state and not to its conflict of laws rules.

(2) Failing any designation by the parties of the applicable statutory provisions or rules of law, the arbitral tribunal shall apply the statutory provisions it considers appropriate.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

Section 604. Decision Making by Panel of Arbitrators

Unless otherwise agreed by the parties, the following shall apply:

1. In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. Questions of procedure may be decided by the chairman alone, if so authorized by the parties or by all members of the arbitral tribunal.

2. Where one or more arbitrators do not participate in a vote without justified reason, the other arbitrators may decide without them. In this case, also, the necessary majority of votes shall be calculated by the total of all participating and not participating arbitrators. In the case where a vote is taken on an arbitral award, the parties shall be informed on the intention to proceed in this manner in advance. With regard to other decisions, the parties shall be informed of the failure to participate in the vote after such vote.

Section 605. Settlement

If, during arbitral proceedings, the parties settle the dispute and if the parties are capable of concluding a settlement on the subject-matter in dispute, they may request

1. the arbitral tribunal to record the settlement, provided that the contents of the settlement do not violate the fundamental values of the Austrian legal system (*ordre public*); it shall be sufficient if the record of the settlement is signed by the parties and the chairman;

2. the arbitral tribunal to record the settlement in the form of an arbitral award on agreed terms, provided that the contents of the settlement do not violate the fundamental values of the Austrian legal system (*ordre public*). Such award shall be made in accordance with section 606. It shall have the same effect as any other award on the merits.

Section 606. Arbitral Award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the chairman or another arbitrator records on the arbitral award the reason for any omitted signature.

(2) Unless the parties have agreed otherwise, the award shall state the reasons upon which it is based.

(3) The award shall state the date on which it was made and the seat of the arbitral tribunal determined in accordance with section 595 paragraph (1). The award shall be deemed to have been made on that day and at that place.

(4) An exemplar of the award signed by the arbitrators in accordance with paragraph (1) shall be delivered to each party.

(5) The award and the documentation regarding its service are joint documents of the parties and the arbitrators. The arbitral tribunal shall discuss with the parties a possible safekeeping of the award and the documentation regarding its service.

(6) The chairman or, in the case he is prevented from doing so, another arbitrator shall, upon request of a party, confirm the *res judicata* effect and the enforceability of the award on an exemplar of the award.

(7) The underlying arbitration agreement does not cease to be effective by the making of the award.

Section 607. Effect of the Arbitral Award

The award has, between the parties, the effect of a final and binding court judgment.

Section 608. Termination of Arbitral Proceedings

(1) The arbitral proceedings are terminated by the award on the merits, by an arbitral settlement, or by an order of the arbitral tribunal in accordance with paragraph (2).

(2) The arbitral tribunal shall terminate the arbitral proceedings when:

1. the claimant fails to submit his statement of claim in accordance with section 597 paragraph (1);
2. the claimant withdraws his statement of claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest of the respondent in obtaining final disposition of the dispute;
3. the parties agree on the termination of the proceedings and communicate this to the arbitral tribunal;
4. the continuation of the proceedings has become impossible for the arbitral tribunal, in particular where the parties hitherto acting in the proceedings fail to continue the proceedings despite written notification of the arbitral tribunal, in which it refers to the possibility of termination of proceedings.

(3) Subject to section 606 paragraphs (4) to (6), section 609 paragraph (5) and section 610, as well as to the obligation to set aside an interim or protective measure, the mandate of the arbitral tribunal terminates upon the termination of the arbitral proceedings.

Section 609. Decision on Costs

(1) Where the arbitral proceedings are terminated, the arbitral tribunal shall decide upon the obligation to reimburse the costs of the proceedings, provided the parties have not agreed otherwise. The arbitral tribunal shall, in exercise of its discretion, take into account the circumstances of the case, in particular the outcome of the proceedings. The obligation to reimburse may include any and all reasonable costs appropriate for bringing the action or defense. In the case referred to in section 608 paragraph (2) number 3, such a decision shall only be made if a party requests such a decision together with communicating the agreement to terminate the proceedings.

(2) Upon request of the respondent, the arbitral tribunal may also decide upon the obligation of the claimant to reimburse the costs of the proceedings, if it has found that it lacks jurisdiction on the grounds that there is no arbitration agreement.

(3) Together with the decision upon the obligation to reimburse the costs of the proceedings, the arbitral tribunal shall, as far as this is already possible and the costs are not set off against each other, determine the amount of costs to be reimbursed.

(4) In any case, the decision upon the obligation to reimburse the costs of the proceedings and the determination of the amount shall be made in the form of an arbitral award under section 606.

(5) If the decision on the obligation to reimburse the costs of the proceedings or the amount to be reimbursed was not made, or was only possible to be made after the termination of the arbitral proceedings, such decision shall be made in a separate arbitral award.

Section 610. Correction, Explanation of the Award and Additional Award

(1) Within four weeks of receipt of the award, unless another time period has been agreed by the parties, each party may request the arbitral tribunal,

1. to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature;
2. if so agreed by the parties, to explain certain parts of the award;
3. to make an additional award as to claims asserted in the arbitral proceedings but not disposed of in the award.

(2) The request under paragraph (1) shall be delivered to the other party. Prior to making a decision upon such a request, the other party shall be heard.

(3) The arbitral tribunal shall decide upon the correction or explanation of the award within four weeks and upon an additional award within eight weeks.

(4) The arbitral tribunal may also correct the award in accordance with paragraph (1) number 1 on its own initiative within four weeks from the date of the award.

(5) Section 606 shall apply to the correction, explanation of the award or to an additional award. The explanation or correction shall form part of the arbitral award.

SEVENTH TITLE: RECOURSE AGAINST THE ARBITRAL AWARD

Section 611. Action for Setting Aside an Arbitral Award

(1) Recourse to a court against an arbitral award may be made only by means of an action for setting aside. This shall also apply to arbitral awards by which the arbitral tribunal has ruled on its own jurisdiction.

(2) An arbitral award shall be set aside if:

1. a valid arbitration agreement does not exist, or the arbitral tribunal has denied its jurisdiction despite the existence of a valid arbitration agreement, or a party was under an incapacity to conclude a valid arbitration agreement under the law governing its personal status;
2. a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was for other reasons unable to present its case;
3. the award deals with a dispute not covered by the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement or the

plea of the parties for legal protection; if the default concerns only a part of the award that can be separated, only that part of the award shall be set aside;
4. the composition or constitution of the arbitral tribunal was not in accordance with a provision of this Chapter or with an admissible agreement of the parties;
5. the arbitral proceedings were conducted in a manner that conflicts with the fundamental values of the Austrian legal system (*ordre public*);
6. the requirements according to which a court judgment can be appealed by an action for revision under section 530 paragraph (1) numbers 1 to 5 have been met;
7. the subject-matter of the dispute is not arbitrable under Austrian law;
8. the arbitral award conflicts with the fundamental values of the Austrian legal system (*ordre public*).

(3) The grounds for setting aside stipulated in paragraph (2) numbers 7 and 8 shall also be considered ex officio.

(4) The action for setting aside shall be brought within three months. The time period shall begin on the day on which the claimant received the award or the additional award. A request made in accordance with section 610 paragraph (1) numbers 1 or 2 does not extend this time period. In the case of paragraph (2) number 6, the time period for the action for setting aside shall be determined in accordance with the provisions on the action for revision.

(5) The setting aside of an arbitral award does not affect the validity of the underlying arbitration agreement. Where an arbitral award on the same subject-matter has been finally set aside twice and if a further arbitral award regarding that subject-matter is to be set aside, the court shall, upon request of a party, concurrently declare the arbitration agreement to be invalid with respect to that subject-matter.

Section 612. Declaration of Existence or Non-Existence of an Arbitral Award
Where the requesting party has a legal interest therein, it may request a declaration on the existence or non-existence of an arbitral award.

Section 613. Consideration of Grounds of Setting Aside in Other Proceedings
Should a court or an administrative authority find in other proceedings, for instance in enforcement proceedings, that grounds for setting aside in accordance with section 611 paragraph (2) numbers 7 and 8 exist, then the arbitral award shall not be relevant in those proceedings.

EIGHTH TITLE: RECOGNITION AND DECLARATION OF ENFORCEABILITY OF FOREIGN ARBITRAL AWARDS

Section 614. Recognition and Declaration of Enforceability of Foreign Arbitral Awards
(1) The recognition and declaration of enforceability of foreign arbitral awards shall be made in accordance with the provisions of the Enforcement Act ("*Exekutionsordnung*"), unless otherwise provided for in international law or in legal instruments of the European Union. The form requirements for the arbitration agreement shall be deemed to be fulfilled, if the arbitration agreement complies both, with the form requirements under section 583 and under the law applicable to the arbitration agreement.

(2) The production of the original or a certified copy of the arbitration agreement in accordance with article IV paragraph (1) (b) of the New York Convention on the

Recognition and Enforcement of Foreign Arbitral Awards shall only be required upon demand by the court.

NINTH TITLE: COURT PROCEEDINGS

Section 615. Jurisdiction

For the action for setting aside an arbitral award and for the action for declaration of existence or non-existence of an arbitral award, as well as for proceedings under the Third Title, the Supreme Court (*Oberster Gerichtshof*) shall have jurisdiction.

Section 616. Proceedings

(1) The proceedings regarding the action for setting aside an arbitral award and the action for declaration of the existence or non-existence of an arbitral award shall be governed by the provisions of this Law on the proceedings before the Courts of First Instance. The proceedings in matters under the Third Title shall be governed by the general provisions of the Act on Non-Contentious Jurisdiction (*Außerstreitgesetz*).

(2) Upon request of a party the public may also be excluded where a legitimate interest in doing so can be shown.

TENTH TITLE: SPECIAL PROVISIONS

Section 617. Consumers

(1) Arbitration agreements between an entrepreneur and a consumer may only be validly concluded for disputes that have already arisen.

(2) Arbitration agreements to which a consumer is a party must be contained in a document signed personally by him. This document must not contain any agreements other than those relating to the arbitral proceedings.

(3) In arbitration agreements between an entrepreneur and a consumer, the consumer shall, prior to concluding the arbitration agreement, receive written legal advice on the relevant differences between arbitral and court proceedings.

(4) In arbitration agreements between entrepreneurs and consumers, the seat of the arbitral tribunal must be stipulated. The arbitral tribunal may only convene at a different place for an oral hearing or for the taking of evidence, if the consumer has approved thereof, or if considerable difficulties hinder the taking of evidence at the seat of the arbitral tribunal.

(5) Where the arbitration agreement was concluded between an entrepreneur and a consumer and where, either at the time of concluding the arbitration agreement or at the time when the action has become pending, the consumer did not have his domicile, habitual residence or place of work in the country where the arbitral tribunal has its seat, the arbitration agreement shall only be binding if the consumer invokes it.

(6) An arbitral award shall also be set aside if, in arbitral proceedings in which a consumer is involved,

1. mandatory provisions of law were violated, the application of which could not have been waived by choice of law by the parties, even in a case with an international element, or

2. the prerequisites are met under which a court judgment may be appealed under section 530 paragraph (1) numbers 6 and 7 by means of an action for revision; in this case, the time period for the action for setting aside shall be determined in accordance with the provisions on the action for revision.

(7) Where the arbitral proceedings were conducted between an entrepreneur and a consumer, the arbitral award shall also be set aside if the consumer did not receive written legal advice as stipulated in paragraph (3).

(8) For an action for setting aside an arbitral award, and for an action for declaration of the existence or non-existence of an arbitral award, as well as for proceedings under the Third Title in arbitration proceedings to which a consumer is party, the Regional Court (*Landesgericht*) having jurisdiction in civil law matters that is specified in the arbitration agreement, or the jurisdiction of which was agreed in accordance with Section 104 Austrian Judicature Act (*Jurisdiktionsnorm*), or failing such specification or agreement, the Regional Court (*Landesgericht*) in whose district the arbitral tribunal has its seat, shall have jurisdiction in first instance, regardless of the amount in dispute. Where the seat of the arbitral tribunal has not yet been determined, or in case of Section 612, if it is not in Austria, the Commercial Court Vienna (*Handelsgericht Wien*) shall have jurisdiction.

(9) Where the dispute underlying the arbitral award is a commercial matter within the meaning of Section 51 Judicature Act (*Jurisdiktionsnorm*), the Regional Court (*Landesgericht*) shall decide in exercise of its jurisdiction in commercial matters, in Vienna the Commercial Court Vienna (*Handelsgericht Wien*).

(10) The proceedings regarding an action for setting aside an arbitral award and an action for a declaration of the existence or non-existence of an arbitral award shall be governed by the provisions of this Law. The proceedings in matters under the Third Title shall be governed by the general provisions of the Act on Non-Contentious Jurisdiction (*Außerstreitgesetz*).

(11) Upon request of a party the public may also be excluded where a legitimate interest in doing so can be shown.

Section 618. Labour Law Matters

Section 617 paragraphs (2) to (8) and paragraphs (10) and (11) apply accordingly to arbitral proceedings in labour law matters in accordance with Section 50 paragraph (1) Labour and Social Courts Act (*Arbeits- und Sozialgerichtsgesetz*); instead of the Regional Court (*Landesgericht*) having jurisdiction in civil law matters, the Regional Court (*Landesgericht*) shall decide in its function as Labour and Social Court, and in Vienna the Labour and Social Court Vienna. The proceedings regarding an action for setting aside an arbitral award and an action for a declaration of the existence or non-existence of an arbitral award shall be governed by the provisions of the Labour and Social Courts Act (*Arbeits- und Sozialgerichtsgesetz*). The Supreme Court (*Oberste Gerichtshof)* shall decide as a senate composed of according to Sections 10 et seq. Labour and Social Courts Act.

ANNEX II

LAW ON MEDIATION IN CIVIL LAW MATTERS*

FIRST TITLE – GENERAL PROVISIONS

Article 1. Term

(1) Mediation is an activity voluntarily entered into by the Parties, whereby a professionally trained neutral facilitator (Mediator) using recognized methods systematically encourages communication between the Parties, with the aim of enabling the Parties to themselves reach a resolution of their dispute.

(2) Mediation concerning civil law matters is mediation to resolve conflicts for which decisions the civil courts would have jurisdiction.

Article 2. Instrument of Regulation

(1) This Federal Law regulates the establishing of an Advisory Council for Mediation, the conditions and procedure for the registration of persons in the List of Registered Mediators, the maintaining of that List, the conditions and procedure for the registration of training institutions and courses for mediation in civil law cases, the maintaining of that List, the rights and obligations of the registered mediators as well as the suspension of limitation periods by mediation in civil law matters.

(2) This Federal Law does not interfere with the lawfully regulated rights and obligations of those persons belonging to independent professions, even where the exercise is within the context of an employment relationship, nor does it interfere with the statutory regulated activities of employees of youth welfare organizations. The same applies to the requirements for the carrying out of the profession and the activities of the probation service in criminal cases as well as to the application of conflict regulators in out-of-court settlement of criminal offences as per Article 90g paragraph (3) *StPO* and Article 29a *BewHG*.

Article 3. Terms

(1) As far as in this Federal Law

1. reference is made to mediation, this shall mean mediation in civil law matters;
2. reference is made to a mediator, this shall mean the registered mediator (male or female);
3. gender-related terms only quoted in the male form shall refer to men and women equally.

(2) Where reference is made to a specified person at the time of the execution of this Federal Law the appropriate gender-related address shall be used.

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SECOND TITLE – ADVISORY COUNCIL (BEIRAT) FOR MEDIATION AT THE FEDERAL MINISTRY OF JUSTICE

*Article 4. Establishment of the Advisory Council (*Beirat*)*

(1) To advise the Federal Minister of Justice in matters concerning mediation an Advisory Council shall be established.

(2) The Federal Minister of Justice shall nominate the members and substitute members for the period of five years. A repeated nomination is possible. In preparation for the nomination the Federal Minister of Justice shall obtain recommendations

1. for twelve members (substitute members) of representative associations in the field of mediation;
2. for a member (substitute member) of each of the following
   a) from the *Berufsverband Österreichischer Psychologinnen und Psychologen*, of the *Österreichischer Bundesverband für Psychotherapie* as well as the *Vereinigung der österreichischen Richter*,
   b) from the Minister for Education, Science and Culture (*Bundesministerin für Bildung, Wissenschaft und Kultur*), the Minister for Health and Women (*Bundesministerin für Gesundheit und Frauen*), the Minister for Social Security and Consumer Protection (*Bundesminister für soziale Sicherheit, Generationen und Konsumentenschutz*) as well as the Minister for Economics and Labour (*Bundesminister für Wirtschaft und Arbeit*),
   c) from the *Bundesarbeitskammer, Wirtschaftskammer Österreich, Österreichische Notariatskammer*, *Österreichischer Rechtsanwaltskammertag*, *Kammer der Wirtschaftstreuhänder* as well as *Bundeskammer der Architekten und Ingenieurkonsulenten*;
3. for two members (substitute members) from the area of academic doctrine and research in the field of mediation of the *Österreichische Rektorenkonferenz*.

(3) Representative in terms of paragraph (2) number 1 is an association to which, taking into account its professional scope of functions, belong a significant number of members working in mediation, and which acts nationally or in a predominant part of the federal territory.

(4) The recommendations should, if possible, include those persons who have practical experience or theoretical skills in the field of mediation. Representation of the needs of those who participate in mediation, or who are especially suitable is to be taken into account.

*Article 5. Duties and Responsibilities of the Advisory Council (*Beirat*)*

The duties of the Advisory Council shall be

1. the discussion of issues and questions which have been submitted to it by the Federal Minister of Justice, as well as the giving of Statements of Opinion and the issuance of Expert Reports,
2. the participation in the passing of regulations pursuant to Articles 29 and 30,
3. the participation in the procedure concerning registration of training institutions and courses (Articles 24, 25 and 28) as well as
4. through its Board (*Ausschuss*), the participation in the procedure concerning registration in the List of Mediators (Articles 12 to 14).

*Article 6. Meetings of the Advisory Council (*Beirat*)*
(1) The Federal Minister of Justice shall act as chairman of the Advisory Council and shall summon it to meetings. At such meetings he may be represented by a civil servant of the Federal Ministry of Justice.

(2) The meetings of the Advisory Council shall not be public. A quorum is established if at least half the members are present. The chairman shall not have voting rights.

(3) The Advisory Council shall make its decisions by simple majority. In the event of an equality of votes a recommendation or application shall be dismissed. On the passing of a resolution of the Advisory Council, the voting members in the minority shall have the right to add their opinion to the resolution in writing.

(4) The activity of the members of the Advisory Council is honorary. They are entitled to reimbursement of necessary cash expenditure including the costs for travelling and accommodation appropriate to *Gebührenstufe 3* of the *Reisegebührenvorschrift 1995, BGBl. No. 133*.

*Article 7. The Board (*Ausschuss*) for Mediation*
(1) The Advisory Council (*Beirat*) shall, from its members who are entitled to vote for the period of five years, elect a Board (*Ausschuss*) consisting of five members together with substitute members, as well as nominate a chairman and his substitute. The period of office ends with the appointment of a new Board. If a member or its substitute member has resigned, the Board shall elect a substitute for the rest of the period of office.

(2) The chairman shall summon the members of the Board to the meetings at the request of the Federal Minister of Justice. Article 6 paragraph (2), first and second sentence, as well as paragraph (3) shall apply. The members are entitled to reimbursement of their expenses appropriate to their activities (Article 30).

THIRD TITLE – THE LIST OF MEDIATORS

Article 8. Maintenance of the List
The Federal Minister of Justice shall maintain a List of Mediators. In the List shall be shown the first and last name, date of birth, the identification of the other profession of the mediator, his professional address and his academic title. If the mediator gives his professional field of activity or his professional fields of activities, these shall also be included in the List. The List of Mediators shall be published electronically in an appropriate way.

Article 9. Requirements for Registration
(1) Entitled to registration in the List of Mediators is any person who proves that

1. he is over the age of 28,
2. he is professionally qualified,
3. he is trustworthy and
4. he has taken out professional liability insurance in accordance with Article 19.

(2) The applicant for registration shall identify in his application the premises at which he practises mediation.

Article 10. Professional Qualification
(1) Professionally qualified is any person who, on the basis of appropriate training (Article 29), is in possession of knowledge and skills of mediation and who is also familiar with its legal and psychosocial basic principles. The training shall be completed in training courses and practical workshops of those institutions, including the universities, which the Federal Minister of Justice has registered in the list of training institutions for mediation in civil law matters.

(2) The assessment of the professional qualification shall take into account the knowledge gained by and the level of completion of qualification of the members of specified professions, in particular Psychotherapists, Clinical Psychologists and Health Psychologists, Lawyers, Notaries, Judges, State Prosecutors, Accountants, Civil Engineers, Consultants, Social Workers, Management Consultants, or Secondary School Teachers, in the course of their own training and their professional practice and which may assist in their practice of mediation.

Article 11. Application for Registration
(1) The procedure for registration in the List of Mediators is initiated on the basis of the written request of the applicant to the Federal Minister of Justice. The application shall provide the information required by Article 8.

(2) The requirements of Articles 9 and 10 are to be evidenced by appropriate documents, such as references, confirmations and professional certificates. The trustworthiness of the applicant, in so far as it is not a legal requirement of the other professional activity of the applicant, is to be proven by a criminal records statement, which is no older than three months, and which confirms that there has been no conviction which might lead to doubts as to the reliability of practice as a mediator.

(3) In the application shall be included a description of previous professional activities as well as the training undertaken to become a mediator, including a list of the institutions where the training has been completed.

Article 12. Verification of Requirements
(1) The Federal Minister of Justice shall first verify, on the basis of the application and its attachments, whether the requirements of Article 9 paragraph (1) numbers 1, 3 and 4 and paragraph (2) concerning the applicant have been complied with, and whether the documents and certificates necessary for the verification of the requirement in accordance with Article 10 are included with the application. If necessary he shall summon the applicant to submit additional documents within a reasonable time limit. The unjustified non-compliance with this summons amounts to a withdrawal of the application.

(2) If the requirement of Article 10 is obviously not met, then the Federal Minister of Justice may obtain an opinion from the Board of Mediation.

(3) The Federal Minister of Justice and the Board may summon the applicant to a hearing. The unjustified non-compliance with the summons amounts to a withdrawal of the application.

Article 13. Registration
(1) Those persons who fulfil the requirements for registration in the List shall be registered by the Federal Minister of Justice for the period of five years, with the date of

the end of the period being identified. Persons not meeting the requirements shall be informed by formal Decision that they shall not be included in the List.

(2) The mediator may, at the earliest one year and at the latest three months, before termination of the registration period, apply in writing for the continuation of the registration for another ten years. He remains registered in the List until the decision concerning the request filed in due time is made known. Renewed applications to continue the registration for a period of a further ten years are admissible.

(3) In the application for continuation of the registration the mediator shall demonstrate his further training (Article 20). The registration shall be maintained if the professional qualification is guaranteed by attendance at further training programmes and if none of the other requirements of Article 14 apply. To verify the requirements of continuance of the registration the Federal Minister of Justice may confer with the Board.

Article 14. Removal from the List

(1) The Federal Minister of Justice shall, if necessary after obtaining an opinion from the Board for Mediation, by a formal Decision remove the mediator from the List if he becomes aware that a requirement of Article 9 has ceased to be met or has not been confirmed, the mediator has not attended to his duties in accordance with Article 20 or he has despite warnings grossly or repeatedly violated his duties.

(2) Furthermore, the mediator shall be removed from the List in the case of his resignation, his decease or because of the expiration of the time limit (Article 13).

(3) In the case of a removal the previous registration shall be kept on the record.

FOURTH TITLE – RIGHTS AND OBLIGATIONS OF REGISTERED MEDIATORS

Article 15. General Rights and Obligations

(1) Whoever is registered in the List of Mediators is

1. entitled to the designation "registered mediator";
2. obliged to carry this designation when practising mediation.

(2) The mediator shall not receive or promise reimbursement, nor have it guaranteed to him, for the provision or recommendation of persons for mediation. Legal acts which violate this prohibition are void. Payments arising out of such legal dealings may be reclaimed.

Obligations towards the Parties

Article 16.

(1) A person who himself is or has been party, party representative, counsellor or decision-making body in a conflict between the parties, may not act as a mediator in the same conflict. Likewise, a mediator may not represent, advise or decide in a conflict which makes reference to the mediation. However, after the end of the mediation with the approval of all affected parties he may act within the scope of his other professional competences to implement the result of the mediation.

(2) The mediator may only act with the approval of the parties. He shall clarify to the parties the character and the legal consequences of mediation in civil law matters and execute this to the best of his knowledge, in person, directly and impartially towards the parties.

(3) The mediator shall refer the parties to counselling needs, particularly in respect of legal issues which result in the context of the mediation, as well as refer to the form required for the drawing up of the result of the mediation in order to ensure the implementation thereof.

Article 17.
(1) The mediator shall document the beginning, the circumstances which indicate whether the mediation procedure has been properly followed, as well as the end of the mediation. As the beginning of the mediation, the date on which the parties agreed to resolve the conflict by mediation shall be the applicable date. The mediation ends if one of the parties or the mediator no longer wishes to proceed or if a result is obtained.

(2) On request of the parties the mediator shall in writing record the result of the mediation as well as the steps necessary for the implementation.

(3) The mediator shall keep his records for at least seven years after the termination of the mediation. On request of the parties he shall deliver a true copy of the records to them.

Article 18. Secrecy, Confidentiality
The mediator is obliged to secrecy about the facts which he has become aware of in the course of the mediation or which have otherwise become known. He shall deal with documents provided or delivered to him in the course of the mediation confidentially. The same applies to the supporting staff of the mediator as well as to persons who act for a mediator, under his direction in the course of a practical training.

Article 19. Liability Insurance
(1) The mediator shall conclude professional liability insurance with an insurer who is entitled to carry on business operations in Austria to cover any claims for damages which result from his activity and shall maintain it during the period of his registration in the List of Mediators.

(2) For the insurance contract the following must apply:

1. Austrian law must be applicable;
2. A minimum insurance cover for each insurable matter shall be EUR 400,000;
3. The exclusion or a time limitation of the continuing liability of the insurer is not permissible.

(3) The insurers are obliged to notify the Federal Minister of Justice on their own initiative and immediately of any circumstance which means/or may mean a termination or limitation of the insurance cover or a deviation from the original insurance certificate, and they shall provide information about such circumstances on request of the Federal Minister of Justice. The mediator shall at all times be capable of evidencing the existence of the liability insurance.

Article 20. Continuing Education
The mediator shall appropriately undertake continuing professional education, of at least fifty hours within a period of five years and provide proof thereof to the Federal Minister of Justice every five years.

Article 21. Notification Duties
The mediator shall notify the Federal Minister of Justice immediately of any change of circumstances which concern his registration in the List of Mediators. The registration shall be changed accordingly.

FIFTH TITLE – SUSPENSION OF TIME LIMITS

Article 22.
(1) The beginning and the proper continuation of the mediation by a registered mediator suspends the application of the start and running of the statute of limitations as well as other time limits concerning rights and claims which are affected by the mediation.

(2) The parties may agree in writing that the suspension also includes other claims which exist between them and which are not affected by the mediation. If the mediation affects rights and claims of family law the suspension then covers all mutual claims, or other perceived rights and claims at family law the parties may have against each other, even without a written agreement, in so far as the parties do not agree otherwise in writing.

SIXTH TITLE – TRAINING INSTITUTIONS AND COURSES

Article 23. Maintaining of the List of Training Institutions and Courses
The Federal Minister of Justice shall maintain a list of training institutions and courses in the area of mediation in civil law matters. The list shall be published electronically in an appropriate way. Out of date entries may be deleted from the electronic publication.

Registration in the List

Article 24.
(1) The procedure for registration of a training facility or course for mediation in civil law matters shall be made on the basis of the written request of the applicant to the Federal Minister of Justice. The application may also refer to sections or particular areas of training.

(2) The applicant shall identify the content of the training, the quantity and qualification of the training personnel and the financing of the facility or the course. With regard to a training facility it shall be proven that the sustainability of the training activity is guaranteed.

(3) If the achievement of the training goals is guaranteed on the strength of the evidence of the applicant, as well as, in the case of a training facility, the sustainability of its activity, the Federal Minister of Justice shall, if necessary after consultation with the Advisory Council, register the training facility or course in the list for the period of a maximum of five years. Applicants who do not fulfil these requirements shall be informed of the refusal of the registration by formal Decision.

Article 25.
(1) A training facility may, at the earliest one year and at the latest three months before expiry of the period of registration, in writing, request the maintenance of the registration

for a further ten years. It shall remain registered in the list until the formal Decision concerning the application, filed on time, is made. Renewed applications to maintain the registration for a further ten year period are admissible.

(2) The registration shall be maintained if from the reports (Article 27) of the training facility it is shown that the suitability is further guaranteed and none of the requirements of Article 28 apply. In order to verify the requirements of the continued maintenance of the registration the Federal Minister of Justice may consult the Advisory Council.

Article 26. Certificates

The registered training institutions and the organizers of registered courses shall issue certificates concerning the achievement of the training goals.

Article 27. Obligation to Report

The registered training institutions in order to prove the sustainability of their activity shall in writing report to the Federal Minister of Justice, at the latest by 1 July of each year, on the extent, the contents and the success of the training over the past year.

Article 28. Removal from the List of Training Institutions and Courses

(1) The Federal Minister of Justice shall remove a training institution or course from the list by formal Decision, if necessary by obtaining an opinion from the Advisory Council, if he is notified that one of the requirements of registration has ceased to apply or has not been met, the training goals have not in principle been met, issued certificates are repeatedly grossly incorrect, a training institution despite warning violates its obligation to report or if the sustainability of its activity is not guaranteed.

(2) Furthermore, a training facility or course shall be removed from the list in the case of withdrawal or the expiration of the time limit (Article 25 paragraph (1)).

(3) In the case of a removal the previous registration shall be kept on the record.

SEVENTH TITLE – AUTHORIZATION FOR ISSUANCE OF A REGULATION

Article 29.

(1) The Federal Minister of Justice shall by Regulation stipulate the specific conditions for the training of mediators after consultation with the Advisory Council for Mediation. In the Regulation the training requirements may be differently defined depending on the areas of professional expertise.

(2) The theoretical part, divided into specific training areas, shall contain 200-300 training units; the practical part shall contain 100-200 training units.

1. The theoretical part:
   a) An introduction to the history of problems and the development of mediation including their basic assumption and models;
   b) Procedural development, methods and phases of mediation with special regard to dispute-oriented and solution-oriented approaches;
   c) Basics of communication, in particular of communication-, problem- and negotiation techniques, the conduct of meetings and moderation with special regard to conflict situations;
   d) Conflict analysis;
   e) Practice areas of mediation;

f) Theories of personality and psycho-social forms of intervention;
g) Ethical problems in mediation, in particular the position of the mediator;
h) Legal problems in mediation, in particular relating to civil law, as well as legal problems in conflicts which are to be particularly considered for a mediation;

2. The practical part:
a) Individual self-awareness and practical experience seminars to practise techniques of mediation through the use of role play, simulation and reflection;
b) Peer group work;
c) Case work and participation in practice supervision in the area of mediation.

(3) The training necessary for a professional group and the practical experience which has been acquired by its exercise shall be considered appropriately (Article 10).

Article 30.
The Federal Minister of Justice, after consultation with the Advisory Council, shall by Regulation define the appropriate reimbursement for the chairman and the members of the Board taking into account the outlay incurred in connection with their activity.

EIGHTH TITLE – CRIMINAL PROVISIONS

Article 31.
(1) Any person who shall reveal or exploit facts in breach of his obligation of secrecy and confidentiality and thereby violates the legitimate interests of another person shall be liable for prosecution by the court with a term of imprisonment of up to six months or a fine of up to 360 daily unit rates.

(2) The offender shall not be prosecuted if the revelation or exploitation, with regard to the content and form, is justified due to public or legitimate personal interest.

(3) The offender shall only be prosecuted on demand of the person whose interest to maintain secrecy has been breached.

Article 32.
In so far as the act does not amount to an offence of a criminal nature, which falls within the jurisdiction of the courts, a breach of administration is committed, and is to be punished with a fine of up to EUR 3,500,

1. in the case where a person refers to himself as a registered mediator or uses a similar title which may confuse,
2. in the case where a person acts in breach of the provisions of Articles 15 paragraph (2), 16, 17, 19, 21 and 27.

NINTH TITLE – FINAL AND TRANSITIONAL PROVISIONS

Article 33.
(1) This Federal Law, in so far as not otherwise defined below, comes into effect on 1 May 2004.

(2) Title II becomes effective on the date subsequent to the publication.

(3) Title VI becomes effective on 1 January 2004.

(4) Applications in accordance with Article 11 may be submitted and approved as from 1 March 2004; the registration in the List becomes first effective as of 1 May 2004.

(5) Regulations arising out of this Federal Law may be enacted as from the date of publication, they become effective at the earliest from the date of the coming into effect of the appropriate provision.

(6) Article 20, second sentence, as amended by Federal Law BGBl. I No. 30/2020, becomes effective on 16 March 2020 and becomes ineffective with the end of 31 December 2021. It shall apply in this version to deadlines that have not expired by the time this provision becomes effective.

Article 34.
Any person who submits an application for registration in the List of Mediators not later than 30 December 2004 and who has attended a theoretical and practical training in mediation of a total of at least 200 training units, the content of which, even if not comprehensive, is equivalent to a training in accordance with Article 29, shall be considered professionally qualified..

Article 35.
(1) The Trade Licence Act (*Gewerbeordnung*) 1994, BGBl. No. 194/1994 shall not apply to the activity of registered mediators.

(2) As far as provisions of other Federal Laws are referred to in this Federal Law, they shall be applied in their valid version.

Article 36.
The Federal Minister of Justice is entrusted with the execution of this Federal Law.

ANNEX III

ENFORCEMENT ACT
(*Exekutionsordnung* (EO))*

Section 1. Enforceable instruments
Enforceable instruments in the sense of the present law are the following acts and documents which have been established in the area of application of the present law:

(...)

16. awards of arbitrators and of arbitration courts which cannot be subject to challenge before a higher arbitral instance and settlements which have been made before them.

(...)

Section 406
Acts and documents are to be declared as enforceable if these acts and documents are enforceable under the provisions of the State in which they have been established and if reciprocity is guaranteed in international treaties or in secondary legislation.

Section 407
Furthermore, an application for declaration of enforceability based on a decision of a foreign court or of another government body, or based on a settlement which has been established before them, or based on a foreign public document, may be granted only:

1. If, according to the local provisions on jurisdiction, the legal matter could be brought before a court of the foreign state;
2. If the summons or order by which the proceedings before the foreign court or the foreign government body have been instituted have been served on the person against whom enforcement shall take place, either in the respective foreign territory, or by legal assistance granted in the territory of another state or domestically according to the provisions for the service of claims;
3. If the decision is not subject to further proceedings inhibiting the enforcement according to present attestations of the foreign court or other government body according to the laws which are applicable for them.

Section 408. Grounds for refusal
The grant of enforcement has to be refused irrespective of the existence of the conditions mentioned in Sections 406 and 407:

1. If the adverse party to the petition has been unable to participate in the proceeding before the foreign court or government body due to irregularities in the proceeding;
2. If by the declaration of enforceability an action shall be enforced which under the domestic law is either prohibited or unenforceable;

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3. If by the declaration of enforceability a legal relationship shall be recognized or a claim shall be satisfied which under the domestic law is invalid or non-actionable in respect of public order or morality.

Section 409. Jurisdiction

Competent for the declaration of enforceability is:

1. the district court where the obligated party has its legal residence or legal domicile, or
2. the district court designated in Sections 18 and 19, in Vienna the court which has jurisdiction for enforcement according to the District Court Organization Law for Vienna.

Section 410. Proceedings

(1) The application for the declaration of enforceability shall be decided by an order without a previous hearing and without hearing the adverse party.

(2) Unless provided otherwise in this section the provisions for enforcement of domestic acts and documents have to be applied accordingly.

Section 411. Recourse

(1) In proceedings concerning recourse against a decision taken on the application for a declaration of enforceability, Section 521a of the Code for Civil Procedure (CCP) applies accordingly, provided that each of the time limits for the recourse and the reply to the recourse is four weeks.

(2) If enforceability is declared fully or partially the following applies for the recourse of the opposing party before the court of second instance:

1. If the legal residence or legal domicile of the opposing party to the petition is not within Austria and if the recourse is the first opportunity to participate in the proceedings, the time limit for the recourse is eight weeks. The time limit for a reply to the recourse is four weeks also in this case.
2. In recourse against the declaration of enforceability reasons for its refusal can also be presented if they were not known to the court in the first instance. In such case the opposing party is obliged to present simultaneously all grounds for refusal not known to the court which will otherwise be precluded.

(3) If the application for declaration of enforceability is fully or partially rejected and if the applicant raises an appeal against this decision, for the reply to the recourse of the opposing party para. 2 number 1 first sentence and number 2 apply accordingly.

(4) Against the decision concerning recourse granting or denying enforceability further recourse is not inadmissible on the grounds that the court of second instance has fully confirmed the decision of the first instance.

(5) If an enforceable instrument is not yet final according to the legal provisions of the country where it has been issued, the court dealing with the recourse against the declaration of enforceability may upon application of the opposing party discontinue the proceedings until the foreign enforceable instrument has become final and binding and may set a reasonable time limit for the opposing party's appeal in the country of origin. The court may, at its discretion, also make already admissible means of enforcement dependent upon payment of a security by the petitioning creditor for the damage pending for the obligated party.

Section 412. Request for enforcement and execution
(1) The request for declaration of enforceability may be combined with the request for grant of execution. The court has to decide on both applications simultaneously.

(2) If the request for grant of execution has not been decided finally before the liquidation of objects seized, the enforcement court has to suspend the enforcement until this decision has become final.

Section 413. Effect of the declaration of enforceability
After the declaration of enforceability has become final and binding a foreign enforceable instrument has to be treated like a domestic one. It has however not more statutory effect than in its country of origin.

Section 414. Setting aside and amendments of the leave for enforcement
(1) If the enforceable instrument in its country of origin has been set aside or amended after the declaration of enforceability has become final, the obligated party may request to set aside or to amend the declaration of enforceability. This request may be combined with a request for termination or limitation of the enforcement proceedings.

(2) The request for termination or limitation of the declaration of enforceability has to be decided by the competent court of first instance for the declaration of enforceability by court order after having heard the petitioning creditor.

Section 415. Recognition
If a declaration is requested as to whether acts or documents which

1. have been established in a foreign country
2. relate to a matter of pecuniary rights and
3. cannot be enforced

must be recognized, the foregoing provisions apply accordingly.

Section 416
(1) The foregoing provisions are not applicable if public international law or legal acts of the European Union provide otherwise.

(2) If on the basis of particular provisions a public authority other than the competent court as stipulated in Section 409 shall have jurisdiction for the declaration of leave for enforcement, the provisions of the Second Title Section 412 para. 2 and Section 413 shall apply.