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# International Arbitration

**Austria: Law & Practice**

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KNOETZL

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# AUSTRIA

## Law and Practice

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## 1. General

### 1.1 Prevalence of Arbitration

Austria has long been established as a European hub for international arbitration and, in particular, Vienna as the capital city is a preferred venue for arbitrations related to the SEE and CEE regions. The legal community boasts a number of arbitration specialists providing high-end counsel and arbitration services. The Vienna International Arbitral Centre of the Federal Economic Chamber (VIAC) provides excellent administration of international arbitrations. In general, arbitration is increasingly becoming the preferred method of resolving larger business disputes in Austria.

### 1.2 Trends

The VIAC Rules of Arbitration and Mediation 2018 entered into force on 1 January 2018. Part I of the VIAC Rules contains the VIAC Rules of Arbitration (Vienna Rules). Under the revised Vienna Rules, VIAC also administers purely domestic cases. Overall, the revision of the Vienna Rules aims to ensure the efficient conduct of proceedings by introducing an electronic case management system, granting arbitral tribunals the power to order security for costs, and correlating the determination of arbitrators' fees with their conduct of proceedings in a timely and cost-effective manner.

As a response to the COVID-19 outbreak, the Vienna Rules were clarified in that, with effect from 1 April 2020, the VIAC Secretariat may send a copy of the arbitral award in electronic form in certain cases. In addition, VIAC published the "Vienna Protocol – A Practical Checklist for Remote Hearings".

The Vienna Protocol aims to provide guidance for arbitrators and the parties in determining whether the conduct of a remote hearing is reasonable and appropriate in the specific circumstances of a case. Both measures are designed to stay in place after the COVID-19 pandemic subsides.

### 1.3 Key Industries

There has been a notable increase in arbitration activity in domestic disputes, particularly concerning energy-related disputes, as well as in construction and engineering. The financial services and banking sector is also increasingly turning to arbitration for dispute resolution. The reason for this increase is primarily due to the increased perception of arbitration as the "normal" form of dispute resolution for more complex disputes.

### 1.4 Arbitral Institutions

The majority of international arbitrations in Austria are administered either by the Vienna International Arbitral Centre of the Federal Economic Chamber (VIAC) under the Vienna Rules (2018) or by the International Court of Arbitration of the

International Chamber of Commerce (ICC) under the Rules of Arbitration of the ICC (2017). A number of arbitrations are also conducted under the rules of other renowned arbitral institutions, such as DIS, LCIA and the Swiss Rules, as well as under the UNCITRAL Rules.

## 2. Governing Legislation

### 2.1 Governing Law

If the seat of the arbitration is in Austria, the arbitration proceedings will be governed by Austrian arbitration law, which is contained in the Fourth Chapter of the Austrian Code of Civil Procedure (Sections 577-618).

The legislation governing arbitration in Austria has been strongly based on the UNCITRAL Model Law since 2006, with few minor deviations. Significantly, Austrian arbitration law does not differentiate between domestic and international arbitration.

### 2.2 Changes to National Law

There have been no changes to Austrian arbitration law in the past year, nor are there any changes planned in the immediate future. Any discussions regarding possible legislative changes are limited to clarifications (eg, regarding the delimitation of consumer and corporate disputes) to maintain Austria as an arbitration-friendly jurisdiction.

## 3. The Arbitration Agreement

### 3.1 Enforceability

Austrian law requires that the arbitration agreement must identify the parties and the dispute (or a defined legal relationship) that are subject to the arbitration clause. Furthermore, the arbitration agreement must be in writing, either as part of a document signed by the parties or as an exchange of letters, telefax, emails or any other means of communication that provides a record of the arbitration agreement. Regarding the exchange of documents, the Austrian Supreme Court has clarified that "exchanged documents" do not need to be signed, irrespective of the means of communication used. Additional formal requirements must be met if consumers or employees are parties to the arbitration agreements.

### 3.2 Arbitrability

The definition of arbitrability is broad. The general rule is that pecuniary claims are usually considered arbitrable, while non-pecuniary claims are considered arbitrable if the parties have the capacity to enter into a settlement agreement with regard to the

specific claim. Disputes that fall under the competence of the administrative authorities are not arbitrable.

Family law matters and all claims based on contracts that are – even only partly – subject to the Tenancy Act (*Mietrechtsgesetz*) or the Non-Profit Housing Act (*Wohnungsgemeinnützigkeitsgesetz*) cannot be made subject to an arbitration agreement, nor can claims concerning condominium property. In addition, certain (collective) labour and social security matters are not arbitrable.

Disputes involving consumers or employees may only be made subject to an arbitration agreement (with additional formal requirements) after the dispute has arisen. The additional formal requirements are extensive and lead to a very high threshold to validly conclude an arbitration agreement with consumers or employees, rendering arbitration agreements in these areas impracticable.

### 3.3 National Courts' Approach

Austrian legislation as well as the courts are arbitration-friendly in terms of enforcing arbitration agreements. In practice, courts apply the principle of “in favorem validitatis” – ie, when in doubt interpret the intended scope of an agreement to favour arbitration.

### 3.4 Validity

Although legislation governing arbitration in Austria is based on the UNCITRAL Model Law on International Commercial Arbitration, the specific wording of Article 16 (1) of the Model Law regarding separability was not adopted. However, the doctrine of separability is recognised by the courts, which evaluate the question of the validity of an arbitration clause contained in an invalid contract on a case-by-case basis by interpreting the intention of the parties. In practice, this will usually lead to the determination that the parties' intent was that the arbitration agreement remains valid where the contract is null and void or otherwise terminated. In cases of consensual termination of the main contract, courts have held that the arbitration clause contained in the contract may also be considered terminated if the parties' intention was to terminate the entire contractual relationship.

## 4. The Arbitral Tribunal

### 4.1 Limits on Selection

The parties are free to agree on a procedure to select the arbitrators. The only limitation under Austrian arbitration law is that an arbitral tribunal must not consist of an even number of arbitrators, and that sitting Austrian judges are prohibited by law from accepting arbitrator mandates.

### 4.2 Default Procedures

Austrian law provides for a default procedure if the parties have failed to designate a method for selecting arbitrators, or if the chosen selection procedure fails. However, in most cases, the parties will have chosen a set of rules that deal with this issue.

As a default, Austrian law states that the number of arbitrators shall be three. In principle, each party shall nominate the same number of arbitrators. However, Austrian law does allow for the joint appointment of one arbitrator by several parties – eg, in the case of multi-party arbitrations.

If the parties have not specified a procedure, a sole arbitrator shall be jointly nominated by agreement of the parties, and an arbitral tribunal shall be appointed by each party appointing one arbitrator and the two party-appointed arbitrators appointing the president of the arbitral tribunal. If a party fails to appoint an arbitrator or if no agreement can be found regarding the appointment of a sole arbitrator or the president of the arbitral tribunal or in multi-party arbitrations, a party may apply to the Austrian Supreme Court to make the default appointment.

### 4.3 Court Intervention

Courts are only involved in the appointment of arbitrators upon the application of (one of) the parties to support the arbitral process. If there is no default procedure agreed upon by the parties, a party can request the court to appoint an arbitrator if the other party fails to do so, or if no agreement can be reached regarding the appointment of the sole arbitrator or the president of the arbitral tribunal or in multi-party arbitrations. Unless the parties have provided otherwise, courts may also be called upon to decide on the application to remove an arbitrator – eg, due to lack of independence or impartiality.

### 4.4 Challenge and Removal of Arbitrators

Austrian law provides for a default procedure if the parties have failed to designate a challenge procedure. It foresees that a party will first submit a written statement of the reasons for the challenge to the arbitral tribunal, which gives the challenged arbitrator the opportunity to resign from office, or the other party may agree that the challenged arbitrator will be removed. If the challenged arbitrator does not resign or is not removed upon mutual agreement of the parties, the arbitral tribunal (including the challenged arbitrator) must decide on the challenge. If the challenge before the sole arbitrator or the arbitral tribunal is unsuccessful, the challenging party may then – within four weeks – apply to the Austrian Supreme Court as the court of first and last instance to decide on the challenge.

If a challenge pursuant to an agreed challenge procedure (eg, contained in arbitration rules) is not successful, the challenging party may also apply to the Austrian Supreme Court for a

review of the challenge decision within four weeks of receiving the decision. The possibility to appeal to the Austrian Supreme Court in these cases is mandatory and may not be waived.

The grounds for the challenge of an arbitrator are justifiable doubts as to their impartiality or independence, and the failure of an arbitrator to meet specific requirements set out in the parties' agreement. The Austrian Supreme Court routinely applies the IBA Guidelines on Conflicts of Interest in International Arbitration as non-binding guidelines. The mere fact that an arbitrator has not disclosed circumstances that may give rise to doubts as to their impartiality or independence alone is generally not per se a ground for a challenge.

## 4.5 Arbitrator Requirements

Arbitrators are required to be independent and impartial. Both Austrian law and the Vienna Rules state that the prospective arbitrator must disclose any circumstances that are likely to give rise to doubt as to their impartiality or independence, prior to accepting an appointment. The obligation to disclose such circumstances is ongoing throughout the arbitral proceedings.

According to case law, the test is whether the circumstances of the case objectively lead to justifiable doubts regarding the arbitrator's independence and impartiality.

## 5. Jurisdiction

### 5.1 Matters Excluded from Arbitration

Disputes that fall into the competence of the administrative authorities are not arbitrable; the same applies to certain (collective) labour and social security matters, and to family law matters and claims based on contracts that are – even only partly – subject to the Tenancy Act or the Non-Profit Housing Act, as well as claims concerning condominium property. Please see 3.2 **Arbitrability** for further details.

### 5.2 Challenges to Jurisdiction

Austrian arbitration law recognises the principle of “competence-competence”, so the arbitral tribunal may rule on a party's challenge to its own jurisdiction.

Lack of jurisdiction of the arbitral tribunal may be raised as a ground to set aside an arbitral award, including a partial award on jurisdiction. If such proceedings are initiated, the question of jurisdiction will be reviewed and ultimately decided by the Austrian Supreme Court.

### 5.3 Circumstances for Court Intervention

Under Austrian law, the courts may only address matters concerning arbitration in limited cases and upon the request of a

party. The rules on jurisdiction generally favour arbitration over court proceedings.

If a court action involving a matter that is subject to an arbitration agreement is initiated prior to arbitral proceedings, the court must dismiss the claim unless the other party enters into the merits of the dispute without raising a jurisdictional objection, or if – after an objection has been raised – the court finds that the arbitration agreement does not exist or is incapable of being performed.

If an action is brought before a court whilst arbitral proceedings are already pending, the court will dismiss the action, unless a party has already challenged the jurisdiction of the arbitral tribunal in the arbitration proceedings and if, exceptionally, the arbitral tribunal is not expected to reach a decision within a reasonable period of time.

Neither of the above actions prevents an arbitration from being initiated or continued, nor an award from being rendered.

Ultimately, the issue of whether (or not) an arbitral tribunal has jurisdiction may also be raised as a ground for setting aside an arbitral award, including an award on jurisdiction.

### 5.4 Timing of Challenge

As a general rule, parties may only challenge the jurisdiction of the arbitral tribunal in setting aside proceedings before the Austrian Supreme Court, which may be initiated after a (partial) arbitral award has been rendered.

However, the parties have the right to go to court to challenge the jurisdiction of the arbitral tribunal during pending proceedings, if a party has already challenged the jurisdiction in the arbitration proceedings and if, exceptionally, the arbitral tribunal is not expected to reach a decision within a reasonable period of time.

### 5.5 Standard of Judicial Review for Jurisdiction/ Admissibility

In setting aside proceedings, the Austrian Supreme Court may assess questions of jurisdiction without being bound to the findings of the arbitral tribunal. In practice, there is a discernible bias in favour of upholding arbitral jurisdiction in review proceedings.

### 5.6 Breach of Arbitration Agreement

The approach of Austrian courts toward a party who commences court proceedings in breach of an arbitration agreement will be to dismiss the action, unless the other party enters into the merits of the dispute without raising a jurisdictional objection or if – after an objection has been raised – the court finds that

the arbitration agreement does not exist or is incapable of being performed, or if arbitral proceedings are already pending but the arbitral tribunal is not expected to reach a decision on its jurisdiction within a reasonable period of time. The courts are generally arbitration-friendly and will observe an arbitration agreement.

## 5.7 Third Parties

Austrian law does not contain explicit provisions allowing an arbitral tribunal to assume jurisdiction over individuals or entities that are neither party to an arbitration agreement nor signatories to the contract containing the arbitration agreement. However, case law has established that both single and universal legal successors, assignees of a claim or contract, and beneficiaries of contracts explicitly establishing a right of third parties are bound by an arbitration agreement even if they are not signatories to the contract. The difference between transfer of rights and novation is sometimes difficult to determine, and must be evaluated on a case-by-case basis.

## 6. Preliminary and Interim Relief

### 6.1 Types of Relief

Unless otherwise agreed by the parties, arbitral tribunals may award preliminary or interim relief. Such relief may only be awarded by the arbitral tribunal after the other party has been given an opportunity to be heard. A further requirement is that the enforcement of a claim would otherwise be frustrated, or that there is a danger that one of the parties may suffer irreparable harm. The relief granted will be considered binding and is enforceable if it is ordered in writing, signed, and served on the parties. Enforcement will only be refused if the order suffers from a defect that would allow it to be set aside (if the seat of arbitration is in Austria) or to be refused recognition or enforcement (if the seat of the arbitration is outside Austria).

If an arbitral tribunal grants preliminary or interim relief that contains a remedy unknown to Austrian law, Austrian arbitration law expects that the enforcing court will look to the purpose to be achieved by the remedy and – by means of interpretation, reformulation or even modification of the remedy granted by the arbitral tribunal – grant an equivalent remedy available under Austrian law.

### 6.2 Role of Courts

Under Austrian arbitration law, parties may turn to the courts or the arbitral tribunal to grant preliminary or interim relief while arbitration proceedings are pending. There are no provisions on emergency arbitrations.

Whilst the parties may exclude the power of an arbitral tribunal to grant preliminary or interim relief, the courts may always be called upon to grant preliminary or interim relief upon the application of a party both before and after constitution of the arbitral tribunal. Preliminary or interim relief granted by a court can only be lifted by the courts, and cannot be reversed by an arbitral tribunal.

Only the courts have the power to enforce preliminary or interim relief awarded by an arbitral tribunal, including by an emergency arbitrator.

Courts may refuse to enforce measures that would be incompatible with an Austrian court measure that was either requested or issued previously, or with a foreign court measure that was issued previously and must be recognised.

### 6.3 Security for Costs

Austrian arbitration law does not contain a provision explicitly granting an arbitral tribunal the power to order security for costs. However, this power is understood to be implied in the competence of an arbitral tribunal to award preliminary or interim relief, and in the fact that Austrian courts may order security for costs if the enforcement of the cost decision is seriously impaired (ie, due to the lack of enforceability of a judgment abroad).

The Vienna Rules 2018 introduced a provision explicitly granting an arbitral tribunal the power to order security for costs.

## 7. Procedure

### 7.1 Governing Rules

Austrian arbitration law grants the parties extensive autonomy in determining the conduct of the arbitration, with only a few mandatory legal provisions that cannot be waived by agreement of the parties. It also provides a framework of default rules that govern the procedure of arbitration if the parties have failed to provide for (institutional or other) rules to govern their arbitration proceedings.

### 7.2 Procedural Steps

The parties are largely free to agree on the manner in which their arbitration proceedings are to be conducted. In the absence of such an agreement (which may also be a reference to a set of rules to be administered by an institution), Austrian arbitration law applies as a default rule and it is otherwise in the discretion of the arbitral tribunal to govern the proceedings. Under the VIAC Rules, the arbitrators are free to conduct the proceedings at their discretion (without the necessity to apply the Austrian

non-mandatory arbitration rules), subject to mandatory law and if the parties have not agreed otherwise.

As a mandatory requirement, the arbitrators must observe the parties' right to fair treatment and each party's right to be heard.

### 7.3 Powers and Duties of Arbitrators

The arbitral tribunal has the following powers:

- to decide on its own jurisdiction as well as the merits of the case;
- to decide on the conduct of the proceedings, where there is no agreement among the parties; and
- to decide on the admissibility of evidence, and to determine its relevance, materiality and weight.

In the course of proceedings, the arbitral tribunal may also grant preliminary or interim relief. It has the duty to treat the parties fairly, and must ensure that each party's right to be heard is observed. Every arbitrator has the duty to remain independent and impartial throughout the arbitration, and has an ongoing obligation to disclose any circumstances that may call their independence or impartiality into question.

### 7.4 Legal Representatives

There are no particular qualifications or other requirements for legal representatives in arbitration proceedings. In particular, there are no restrictions as to the nationality and/or qualification of counsel.

In proceedings to set aside an arbitral award, there is an obligation to be represented by a lawyer admitted to the Bar in Austria.

## 8. Evidence

### 8.1 Collection and Submission of Evidence

Austrian arbitration law does not contain any explicit provisions regarding the collection and submission of evidence.

In practice, most arbitrators adopt a hybrid approach and will take both civil and common law rules on evidence into consideration. For example, extensive discovery is rare in international arbitrations conducted in Austria, whereas document production, the use of written witness statements and extensive cross-examination are standard features of arbitral proceedings in Austria.

Although the client/attorney relationship is privileged under Austrian law, the scope and rules regarding legal privilege are regulated according to the civil law tradition and thus differ from the common law concept of privilege.

### 8.2 Rules of Evidence

Austrian law does not stipulate rules of evidence that apply specifically to arbitral proceedings. The general principle is the free evaluation of evidence. The IBA Rules on the Taking of Evidence in International Arbitration are frequently referred to as guidelines.

### 8.3 Powers of Compulsion

In general, arbitral tribunals do not have any powers of compulsion but may instead request the courts' assistance regarding the collection of evidence or the interrogation of a witness. Specifically, arbitral tribunals have no power to force a witness to testify or to enjoin a refusing party to produce a document.

An arbitral tribunal that has its seat in Austria may appeal to Austrian and foreign courts for legal assistance, and may therefore indirectly obtain the testimony of a reluctant witness or the production of a document.

There is no difference between the witness testimony of parties and unrelated third parties.

## 9. Confidentiality

### 9.1 Extent of Confidentiality

Austrian arbitration law does not contain any explicit provisions on the confidentiality of arbitral proceedings.

There is no provision in Austrian law obliging the parties to keep the arbitral proceedings confidential (including pleadings, documents, and the award). If confidentiality is desired, the parties are advised to agree on the confidentiality in the arbitration agreement or elsewhere.

The Vienna Rules contain provisions binding the arbitral institution and arbitrators to confidentiality, but not the parties.

Austrian arbitration law does provide that the public may be excluded from setting-aside proceedings if this is requested by one of the parties.

## 10. The Award

### 10.1 Legal Requirements

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of the arbitrators, including any arbitral award. The parties may, however, agree otherwise and require a unanimous decision to be rendered. The further requirements for an arbitral award are that it must be made in writing, state the date on which it was

rendered and the seat of the arbitration, and be signed by the arbitrator(s).

Unless the parties have agreed otherwise, the award must also state the reasons on which the decision is based.

The delivery of the award is not subject to any time limits, unless so agreed by the parties.

## 10.2 Types of Remedies

Austrian arbitration law does not contain any explicit provisions on the types of remedies that an arbitral tribunal may award. Generally, the available remedies as well as any limits thereto or prescription periods must be determined by reference to the law applicable to the merits.

The remedy of punitive damages is not known under Austrian Law and, in principle, the concept of punitive damages is considered contrary to Austrian public policy.

## 10.3 Recovering Interest and Legal Costs

Austrian arbitration law does not contain any explicit provisions on whether the parties are entitled to recover interest. In most cases, this will depend on the law applicable to the merits.

Unless the parties have agreed otherwise, they are entitled to recover legal costs, upon request (encompassing the reasonable costs of legal representation, the fees of the arbitrators and – where applicable – the administrative costs charged by the institution). Both Austrian law and the Vienna Rules foresee that the arbitral tribunal must render a decision on costs upon termination of the proceedings, including in cases where the arbitral tribunal ultimately finds it has no jurisdiction. The general practice with regard to allocating costs between the parties is to take into account all circumstances of the case, with a particular focus on the outcome of the proceedings.

## 11. Review of an Award

### 11.1 Grounds for Appeal

Within three months of receiving the arbitral award, a party is entitled to file an action for the award to be set aside based on one (or more) of the following grounds:

- 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;

- a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was unable to present its case for other reasons;
- 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;
- 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;
- the arbitral proceedings were conducted in a manner that conflicts with the fundamental values of the Austrian legal system (*ordre public*);
- the requirements according to which a court judgment can be appealed by an action for revision under section 530 paragraph (1) numbers 1 – 5 have been met (note that the grounds for revision referred to all relate to the circumstance that the decision was based on a fraudulent action or forged document, or a criminal verdict that has since been reversed, and that the three-month time period to file the action for setting aside does not apply to this ground);
- the subject matter of the dispute is not arbitrable under Austrian law; or
- the arbitral award conflicts with the fundamental values of the Austrian legal system (*ordre public*).

Additional grounds are available to set aside an arbitral award rendered in arbitral proceedings in which either a consumer or an employee was involved.

The action to set aside an award is to be filed with the Austrian Supreme Court, which will decide as first and last instance – ie, without possibility of a further appeal. Practice has shown that a well-reasoned decision will be rendered within a comparatively short period of six to eight months on average.

### 11.2 Excluding/Expanding the Scope of Appeal

Under Austrian law, parties cannot agree to exclude or expand the scope of an appeal or challenge.

### 11.3 Standard of Judicial Review

It is firmly established in the case law of the Austrian Supreme Court that there is no “*révision au fond*” of the merits of the case. This principle is strictly applied and the Austrian Supreme Court has consistently refused to entertain a review of the merits of the arbitral decision when claimants in setting aside proceedings have requested this in the guise of annulment grounds.



## 12. Enforcement of an Award

### 12.1 New York Convention

Austria has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards without reservation. Austria is also a contracting state to several other multilateral conventions on the recognition and enforcement of arbitral awards, including the 1961 European Convention on International Commercial Arbitration and the Geneva Convention on the Execution of Foreign Arbitral Awards (1927), as well as a number of bilateral agreements governing the reciprocal recognition and enforcement of arbitral awards. Moreover, Austria has ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, and a number of Bilateral Investment Treaties.

### 12.2 Enforcement Procedure

Arbitral awards are deemed to be equivalent to judgments of state courts and, thus, will be enforced the same way by means of application to the District Court (*Bezirksgericht*) of the district where the respondent has its seat, or where the object, asset or third-party debtor that will serve to satisfy the claimant's request for enforcement is registered or located.

An authenticated original or a duly certified copy of the arbitral award must be submitted together with the application for enforcement. The original or a certified copy of the arbitration agreement must only be presented upon a request by the court.

If the arbitration was seated outside Austria, the award will first have to be formally recognised (pursuant to the New York Convention or other multilateral or bilateral treaties) by the District Court that is competent for enforcement. The application for recognition can be made together with the request for enforcement, and the courts will decide simultaneously on both requests. After being declared enforceable, the foreign award is treated as a domestic arbitral award – ie, equivalent to the judgment of an Austrian Court.

### 12.3 Approach of the Courts

The general approach of the courts toward the recognition and enforcement of arbitral awards is pragmatic, and the grounds listed in the applicable conventions are interpreted restrictively.

Whilst the opposing party will be granted the opportunity to raise grounds based on which it believes the recognition and enforcement of the award will be refused, these grounds are interpreted narrowly. This applies in particular to public policy grounds, which must reach a high threshold in order to be considered sufficient reason to refuse recognition and enforcement.

## 13. Miscellaneous

### 13.1 Class-Action or Group Arbitration

Austrian law does not provide for specific class action or group actions in general. Accordingly, there are also no provisions governing class action or group arbitration.

In Austria, various rules that apply to multi-party proceedings are used as bases for group actions in court proceedings. Provided there is a valid arbitration agreement in place, there is no reason to assume that the same cannot apply to group arbitrations, given the fact that Austrian arbitration law contains rules regarding the appointment of arbitrators in multi-party arbitrations.

### 13.2 Ethical Codes

The conduct of the legal profession in Austria is subject to the Code of Professional Conduct for Lawyers (*Rechtsanwaltsordnung*), and to numerous EU regulations. While none of these expressly refer to international arbitration, it is common practice to apply them also in arbitral proceedings. Lawyers must not make allegations they know to be false. However, there is no obligation to verify the truthfulness of the information given by a client or a witness. Foreign lawyers acting in arbitrations seated in Austria are not bound by Austrian professional ethics rules but are generally understood to be bound by the ethics rules of their respective home jurisdiction.

### 13.3 Third-Party Funding

The Austrian market shows that third-party funding is a well-established practice in litigation and arbitration. This is also evident from the increasing number of third-party funders active in the Austrian market.

There are no express provisions on third-party funding under Austrian law, although there are two rules that could be understood to limit it. First, Austrian law requires the claim to be made (litigated) by the person who owns it – ie, it is not permissible for a claim to be made in one person's name but on behalf of another person. Second, it is forbidden for attorneys to enter into contingency fee arrangements.

### 13.4 Consolidation

Whilst Austrian arbitration law does not provide for rules regarding the consolidation of separate arbitral proceedings, it is considered permissible.

The Vienna Rules allow for the consolidation of separate arbitral proceedings – eg, if the seat of arbitration in all of the arbitration agreements is the same and the parties agree to the consolidation, or if the same arbitrators were nominated for all proceedings concerned.

## **13.5 Third Parties**

As a general rule in Austria, only the signatories of an arbitration agreement are bound by it, although there are exceptions. In particular, it has been established by case law of the Austrian Supreme Court that legal successors and third-party beneficiaries are bound by the arbitration agreement. Please see **5.7 Third Parties** for further details.

KNOETZL is Austria's first large-scale dispute resolution powerhouse and has successfully developed into Austria's largest dispute resolution team. KNOETZL's arbitration practice encompasses international commercial arbitration, investment protection and arbitration-related court proceedings. Key industries include construction and engineering, energy, banking, automotive and aviation, IT and telecommunications, life sciences, and healthcare and pharmaceuticals. Members of the

arbitration team have successfully acted as counsel in some of the largest and most complex disputes in the CEE region in recent decades, under all the major arbitration rules. KNOETZL lawyers act as arbitrators in a large number of arbitration cases in a wide array of industries. Members of the firm are recognised as leading arbitration specialists and hold functions in major arbitral institutions and arbitration associations.

## Authors



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VIAC, as well as in international and domestic ad hoc arbitration such as UNCITRAL. Florian is the current president of the Austrian Arbitration Association (ArbAut). He lectures at the University of Vienna and frequently speaks and publishes on international arbitration and investment protection. He received the Teaching Award 2018 of the University of Vienna and has been a member of the ICC Taskforce on "Corruption in Arbitration" since 2019.



**Patrizia Netal** is a co-founder of KNOETZL and a partner in its international arbitration team. She has extensive experience in arbitration proceedings under the DIS, ICC, VIAC and UNCITRAL Arbitration Rules. She acts as both counsel and arbitrator, and has been involved in numerous large-scale

projects across the SEE and CEE region, with a substantial focus on construction and engineering, post-M&A disputes, and international sales contracts. In January 2020, Patrizia became a member of the Board of VIAC (Vienna International Arbitral Centre). She is co-director of the Vis Moot (the world's largest student competition in international arbitration) and is Austria's Steering Committee member of the Pledge for Equal Representation in Arbitration. She also lectures on arbitration subjects at the Austrian Arbitration Academy of the University of Vienna and is a faculty member of the Delos Remote Oral Advocacy Programme (ROAP). Patrizia is co-author of the Vienna Protocol – A Practical Checklist for Remote Hearings (VIAC; 2020 edition) and of the VIAC Handbook Vienna Rules, A Practitioner's Guide (2019 edition).



**Emmanuel Kaufman** is an Argentine lawyer with more than ten years' experience in commercial and construction arbitration and investment arbitration in Austria, CEE, SEE and Latin America. He acts as both counsel and arbitrator, having represented clients in

complex arbitration proceedings in the energy, foreign investments, international trade, telecommunications, construction and engineering sectors under the ICC, VIAC, UNCITRAL and ICSID arbitration rules. Emmanuel is admitted to the Bar of the City of Buenos Aires, Argentina, and has been a member of the ICC Commission on Arbitration and ADR since 2018, as well as the ICC Young Arbitration Forum Representative for Europe and Russia (2019-21).



**Natascha Tunkel** is a partner at KNOETZL and has more than ten years of experience in the field of complex dispute resolution. She acts as arbitrator and as counsel under the major arbitral rules in disputes arising from a wide array of industries, including technology, life

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